

Sanjiv Kumar

Vs

State of Himachal Pradesh

Criminal Appeal No. 1059 of 1997

(G. B. Pattanaik, M. B. Shah JJ)

22.01.1999

JUDGMENT

G. B. Pattanaik J

1. These three appeals arise out of one Sessions Trial being Sessions Trial No. 9-B/7 of 1990 and were heard together and are being disposed of by this common judgment. Appellant Sanjiv Kumar stood charged under Sections 120B, 302 and 201 IPC. Appellant Kamlesh Tyagi stood charged under Sections 120B, 302 read with Section 120B and 201 IPC. Appellant Lekh Raj Gupta stood charged under Sections 120B, 302 read with Section 120N and 212 IPC. It was alleged that all three of them hatched a criminal conspiracy to kill the deceased Rajesh Sharma and in furtherance of the said conspiracy accused Sanjiv Kumar caused murder of the deceased whereafter accused Sanjiv and accused Kamlesh caused disappearance of the evidence of the offence. Accused Lekh Raj is alleged to have harboured accused Sanjiv Kumar knowing him to have committed the offence with the intention of saving him from legal punishment. The learned Sessions Judge on a thorough analysis of the evidence on record convicted accused Sanjiv Kumar under Section 120B, 302 IPC and 201 IPC. He was sentenced to undergo imprisonment for life for the conviction under the first two charges and 7 years R.I. for his conviction of the last charge. In addition, he was directed to pay a fine of Rs. 5,000/- for each of the offences with the further direction that the sentences would run concurrently. Accused Kamlesh Tyagi was also convicted under Section 120B, and Section 302 read with Section 12-B IPC and was sentenced to undergo imprisonment for life for each of the offences and pay a fine of Rs. 5,000/- on each count. She was also further convicted under Section 201 and was sentenced to imprisonment for 7 years and to pay a fine of Rs. 5,000/-. Accused Lekh Raj was convicted only under Section 212 IPC and was sentenced to undergo imprisonment for 5 years and to pay a fine of Rs. 5,000/-. Against their conviction the accused persons preferred two appeals - Criminal Appeal No. 121/93 and Criminal Appeal No. 125/93. The State also preferred two appeals against accused Sanjiv and accused Kamlesh and other against accused Lekh Raj for enhancement of sentence awarded by the learned Sessions Judge. These 4 appeals stood disposed of by the High Court by judgment dated 20th September, 1996, whereunder the conviction and sentence of accused Sanjiv Kumar under Sections 302/120B and 201 was affirmed. Similarly the conviction and sentence passed against accused Kamlesh Tyagi was also affirmed. But, so far as accused Lekh Raj is concerned, though his conviction under Section 212 IPC was upheld but the sentence was modified to the period already undergone. The appeals filed by the State for enhancement of sentence were also dismissed and hence the present appeals.

2. At the outset it may be stated that there is no eye witness to the commission of murder and case accordingly hinges upon the circumstantial evidence. The prosecution case in nutshell is accused Sanjiv Kumar is nephew of accused Kamlesh being her brother's son. The father of the deceased

was at relevant point of time posted as Additional District Attorney-cum-Public Prosecutor at Bilaspur. Accused Kamlesh had 4 daughters. The eldest daughter Chanchal, was a classmate of the deceased and the family of the accused and the family of the deceased were on visiting terms. Both the families were residing in the same colony in Bilaspur. Sometimes later the family of the deceased shifted themselves from agricultural colony to Dhora as PW19 the father of the deceased got an official accommodation at Dhora. The further prosecution case is that deceased had developed some intimacy with Chanchal which was not approved of by the father of the deceased. PW19 in fact met Kamlesh on one occasion and requested her to refrain her daughter from meeting the deceased. But Kamlesh told PW19 that he should restrain his son from meeting Chanchal. It was also alleged that several threats were given by Kamlesh and Sanjiv to the deceased. On the fateful day on 25.5.1990 a telephonic message was received from PW1 that the son of the Additional District Attorney has been murdered by somebody with knife which information was entered in Daily Diary Report in the Police Station Sadar Bilaspur. The District Inspector of Police PW36 transmitted the message on telephone to the Incharge City Police which was received by PW35 who was directed to proceed to the spot. Said PW35 then immediately proceeded and at the place of occurrence recorded the statement of Rajeev-PW1 which was treated as an FIR. The police then started investigation and after completion of investigation filed the chargesheet as already stated. The accused persons on being committed stood their trial and were ultimately convicted by the learned Sessions Judge, as already indicated. In the absence of any direct evidence relating to the murder of the deceased the learned Sessions Judge as well as the High Court based their conviction on the circumstantial evidence.

3. Learned Sessions Judge relied upon the following circumstances to bring home the charge against accused Sanjiv Kumar;

- (i) Sanjiv was seen going to the house of the deceased at about 10.15 a.m. by PW 34 and he was seen coming out of the house of the deceased immediately after the occurrence by PW1.
- (ii) Shortly after the occurrence Sanjiv Kumar went to the house of PW 2 Sapna when his clothes were blood-stained and he requested Sapna to get clothes for being changed from the house of the second accused Kamlesh.
- (iii) Conduct of accused Sanjiv Kumar in leaving the place and roaming under suspicious circumstances and on being enquired by PW 22 giving a false explanation.
- (iv) Recovery of knife Exhibit P 4 at his residence while in custody.
- (v) Recovery of clothes of the accused Sanjiv Kumar which he was wearing at the time of occurrence from the house of Kamlesh which on chemical examination were found to be stained with human blood.
- (vi) The medical evidence corroborating that the knife could be used for causing the injury on the deceased and the identification of Sanjiv Kumar by the prosecution witness.

4. On these circumstances the Sessions Judge came to hold that the prosecution case as against accused Sanjiv Kumar has been proved beyond reasonable doubt. So far as accused Kamlesh is concerned, the learned Sessions Judge relied upon the following circumstances for establishing the

charges :-

(i) Luring of threats by her against deceased;

(ii) She came to the house of PW2 Sapna and then sent clothes of accused No. 1 for changing his blood stained clothes;

(iii) her subsequent act and conduct when prosecution witnesses reached her residence;

(iv) her going to the shop of PW12 and making enquiries about whereabouts of Sanjiv Kumar and giving false explanation that accused No. 1 had given beating by some boys and was not traceable.

5. So far as accused Lekh Raj is concerned, the learned Sessions Judge came to the positive conclusion that he was not involved in the criminal conspiracy alleged to have been made by accused No. 1 and 2 and, thereafter, the charges against him under Sections 120B and 302/120B must fail.

6. But so far as charge under Section 212 IPC is concerned, namely, harboring accused No. 1 after commission of the crime the learned Sessions Judge relied upon the fact that Lekh Raj took Sanjiv on his scooter and thereby permitted accused No. 1 Sanjiv Kumar from evading arrest which is sufficient to establish the charge under Section 212 and accordingly convicted him of the same offence.

7. On appeal the High Court re-appraised the materials on record and being of the opinion that the circumstances found to have been established by the Sessions Judge complete the entire chain for proving the charge against Sanjiv Kumar and Kamlesh upheld the conviction and sentence passed by the learned Sessions Judge. And so far as Lekh Raj is concerned, while the High Court upheld the conviction but modified the sentence to the period already undergone. The High Court in the impugned judgment came to hold :

"Therefore, from the chain of circumstances proved on record the only hypothesis which we can think of is that it was accused Sanjiv Kumar who had killed Rajesh, as such, he is guilty of offence under Section 302, but in view of the other circumstances proved on record, it was done by him as a result of conspiracy hatched between him and accused Kamlesh Tyagi."

8. Mr. Lalit, learned senior counsel appearing for accused Sanjiv Kumar contended in this Court that in a case of circumstantial evidence each incriminating circumstance must be proved beyond reasonable doubt and all such circumstances taken together must complete the chain leaving no missing link from which it can be conclusively said that it is the accused who is the perpetrator of the crime and nobody else, and applying this principle to the circumstances sought to be established by prosecution it cannot be held that the prosecution case as against accused Sanjiv Kumar has been proved beyond reasonable doubt. According to the learned counsel unless and until various links in the chain of evidence led by the prosecution have been proved which would unhesitatingly point to the guilt of the accused the prosecution case cannot be held to have been established. It is the further submission of Mr. Lalit learned senior counsel that all the links in the chain must be conclusively established to cogent and unimpeachable evidence. The learned counsel submitted that the circumstantial evidence must be of a conclusive nature and the circumstances must not be capable of

duality of explanation. In elaborating this submission Mr. Lalit, learned counsel placed before us the evidence of PW 34 and PW1 both of whom proved the two most vital pieces of evidence and pointed out several infirmities and contended that if the evidence of these two witnesses are unreliable and cannot be taken into account then whatever may be the residue of the evidence the prosecution case cannot be said to have been established beyond reasonable doubt as against accused Sanjiv Kumar. On the question of charge under Section 120B of the Indian Penal Code Mr. Lalit, learned senior counsel submitted with force that there is hardly any material on record to establish the aforesaid charge and both the learned Sessions Judge as well as the High Court committed serious error in recording a finding that the charge under Section 120B has also been established beyond reasonable doubt. The learned counsel submitted with force that the necessary ingredients for the offence under Section 120B being a party to a criminal conspiracy and in the absence of an iota of material in support of the same the conviction under Section 120B or Section 302 read with 120B cannot be upheld. According to Mr. Lalit the only circumstance for establishing the charge under Section 210 IPC so far as accused Sanjiv Kumar is concerned, is changing of clothes and handing over the same to PW2 for being handed over to accused Kamlesh and on this circumstance even if it is held to have been established the offence cannot be said to have been proved beyond reasonable doubt.

9. Mr. Jitender Sharma, learned senior counsel appearing for accused Kamlesh reiterated the submissions made by Mr. Lalit, so far as the charges under Section 302 read with Section 120B Indian Penal Code is concerned. According to the learned counsel neither the materials on record established any prior meeting of mind between Kamlesh and Sanjiv Kumar nor any of the circumstance established in the case would fasten the liability of the offence of murder on accused Kamlesh and, therefore, the conviction of Kamlesh by taking recourse to Section 120B is wholly unsustainable in law.

10. So far as her conviction under Section 201 is concerned, Mr. Sharma contends that the only piece of evidence relied upon by the prosecution in this regard is when the prosecution witness reached her house she protested and wanted whether any search warrant is there and thereafter from her bathroom blood stained clothes of the accused were recovered which at that point of time were being washed and on that circumstance alone the conviction of Kamlesh under Section 201 Indian Penal Code cannot be upheld. Lastly Mr. Sharma urged that even if her conviction is upheld she has already undergone imprisonment for more than 4 years and 8 months and the sentence should be reduced to the period undergone.

11. Mr. Prem Malhotra, learned counsel appearing for accused Lekh Raj submitted that the prosecution has not led any evidence to come to the conclusion that Lekh Raj knew about the commission of offence of Sanjiv Kumar when he took him on scooter and that being so, his conviction under Section 211 Indian Penal Code is wholly unsustainable.

12. Mr. Kochher, learned senior counsel appearing for the respondents very fairly that on the circumstances established by the prosecution it would be difficult to sustain the conviction under Section 120B IPC as there has been no material to prove the alleged conspiracy between Sanjiv Kumar and Kamlesh. The learned senior counsel also fairly stated that the conviction of Lekh Raj under Section 212 IPC may not be sustainable since the materials on record do not justify a finding that Lekh Raj knew about the commission of offence by Sanjiv Kumar when he took him on the scooter and the only item of evidence is that shortly after the occurrence he gave lift to Sanjiv Kumar on his scooter whereafter Sanjiv Kumar remained absconding for some period. But he argued with force that the circumstances established in the case unequivocally proved the charge

under Section 302 IPC so far as Sanjiv Kumar is concerned, and Section 201 IPC so far Kamlesh is concerned, and on the materials on record it must be held that these charges have been proved beyond reasonable doubt. To appropriate the correctness of the rival submissions it would be necessary for us to first enumerate the circumstances which can be said to have been established by the prosecution and then examine whether the different ingredients of different offence charged can be said to have been duly established or not ?

13. It is apparent from the evidence of PW 34 that on 25.5.1990 at 10.15 a.m. when he had been to the house of deceased Rajesh while Rajesh was alone accused Sanjiv Kumar reached the place and introduced himself as Sanjiv Kumar resident of Dhora and even the deceased also told him the identity of accused Sanjiv Kumar. He also categorically stated that Sanjiv was wearing yellow T-shirt and blue jeans and sports shoes. According to his evidence Rajeev Rawat PW1 came to his house and told him that Rajesh has been killed by somebody and further he has been seen the boy coming out of the house of Rajesh and running who had knife in his hand. He also stated that Rajeev told him that the boy was wearing yellow T-shirt and blue jeans and he replied Rajeev that he also saw a boy in the house of Rajesh and thereafter when they went to the house of the deceased Rajesh they found blood on the floor and Rajesh was lying on the dining chair. Mr. Lalit pointed out us several omissions from his earlier statement to the police in as much as he had not stated to the police that in his presence Rajiv told the police that he is the same boy who was seen by him running from the house of Rajesh after committing murder. He had also not stated to the police the Rajeev told him about seeing a boy going out of the house wearing yellow T-shirt and blue jeans and those omissions were also duly confronted to him. The question, however, remains as to whether such omissions can be said to be material omissions tantamounting to contradiction and whether on such material omission the evidence of PW 34 should be discarded from the purview of consideration ? But having scrutinised the evidence of PW 34 in detail we find it difficult to discard the same from the consideration totally, and in our view, the so called omissions in his earlier statement to police cannot be held to be material ones totally impeaching his evidence. There has been no omission or contradiction relating to the fact that while he was in the house of Rajesh, Sanjiv came there and introduced himself as Sanjiv and even the deceased also introduced Sanjiv Kumar to him. From his evidence it can be safely concluded that Sanjiv was seen in the company of the deceased Rajesh in his house while Rajesh was alone at 10.15 a.m. on the date of occurrence on 25.5.1990.

14. The next circumstance which has been relied upon by the prosecution is the fact that PW1 saw somebody leaving the place of occurrence with knife in his hand wearing yellow T-shirt and blue jeans and said PW1 identified accused Sanjiv Kumar to be the said person in T.I. parade. It is not the prosecution case that PW 1 knew Sanjiv Kumar, and therefore, unless the identity of Sanjiv Kumar is established to be the person who was seen by PW1 to have left the place of occurrence with a yellow T shirt and blue jeans and knife in his hand the said circumstance cannot be of any use. The High Court in the impugned judgment while discussing the identification of Sanjiv Kumar by PW1 in the T.I. Parade held on 13.7.1990 came to the conclusion that the said T.I. Parade loses its importance and the possibility of his seeing Sanjiv Kumar or his photograph is not ruled out as he was brought to the house of Rajesh on the very next day and used to be taken to the Courts and was also paraded in the bazar of Bilaspur along with accused Kamlesh. If the identification of accused Sanjiv Kumar by PW1 in T.I. Parade held on 13.7.1990 is held to be invalid as has been held by the High Court then the second circumstance to the effect that PW1 saw Sanjiv Kumar leaving the scene of occurrence with knife in his hand cannot be said to have been established.

15. The next circumstance which can be said to have been established beyond reasonable doubt

through the evidence of PW2 is that on the date of occurrence accused Sanjiv Kumar with blood stained clothes on his reached the house of PW2 and requested her to go to the house of accused Kamlesh and bring a set of clothes for his change and in fact said PW2 went to the house of Kamlesh and informed her as desired by Sanjiv Kumar. This is a rather clinching circumstance against accused Sanjiv Kumar who was seen by PW2 with blood stained clothes on his person immediately after the occurrence and nothing has been pointed out to us by Mr. Lalit, learned counsel to discard this piece of evidence. The next circumstance which can be said to have been established by the prosecution is the alleged search of the house of accused Kamlesh and recovery of blood stained clothes of the accused Sanjiv Kumar from the bathroom which were being washed. This circumstance is established from the evidence of Sapna-PW2, R.L. Chauhan-PW7 and Vipan Sharma-PW11. The relevant seizure list is Exhibit PG. The report of the Chemical Examiner and that of the Serologist is Exhibit PX/2, PW1, PW34 and PW2 categorically deposed that these were clothes which had been used by accused Sanjiv Kumar on the relevant date at the relevant point of time. The report of Chemical Examiner and report of the Serologist indicate the presence of human blood on the wearing apparels of Sanjiv Kumar which were seized from the house of accused Kamlesh and the accused has not offered any explanation for the same in his examination under Section 313 Cr.P.C. From the evidence of PWs 16 and 17 it has been established that accused Sanjiv Kumar while in custody, made a statement in relation to the weapon of offence Exhibit P-4 and pursuant to such statement the knife was recovered under Exhibit PV. The said knife also on chemical examination and serologically tested was found to be stained with human blood. The two Courts of fact have believed the evidence of PWs 15 and 17 and nothing has been pointed out as to why the said evidence should not be relied upon. The aforesaid circumstance also is another clinching piece of evidence as against accused Sanjiv Kumar. On the aforesaid circumstances, being established by the prosecution the conclusion is irresistible that the chain of circumstances so proved is complete and the charge of murder against accused Sanjiv Kumar is proved beyond reasonable doubt. Said accused Sanjiv Kumar, therefore, has to be convicted under Section 302 IPC and for said conviction he is sentenced to imprisonment for life.

16. Coming to the question of charge under Section 120B IPC to establish a conspiracy between accused Sanjiv Kumar and accused Kamlesh, apart from the relationship, namely, Sanjiv was the nephew of Kamlesh the prosecution evidence is totally silent to establish a criminal conspiracy between them for committing the murder of deceased Rajesh. The offence under Section 120B is an agreement between the parties to do a particular act. There is not an iota of material to establish the alleged agreement between accused Sanjiv Kumar and accused Kamlesh. In the absence of such evidence the mere fact that Sanjiv Kumar was the nephew of Kamlesh cannot be held to be sufficient to lead to an inference of conspiracy. Association of Sanjiv Kumar with Kamlesh being a relation is not enough to establish that both of them entered into a conspiracy to kill deceased Rajesh. In the aforesaid premises, the learned counsel appearing for the respondent State was right in his submission that the charge of conspiracy cannot be sustained. We accordingly, set aside the conviction of accused Sanjiv Kumar as well as of accused Kamlesh under Section 302/120B of Indian Penal Code.

17. So far as the conviction of accused Kamlesh under Section 201 IPC is concerned, from the prosecution evidence it is established that when Sapna-PW2 informed that Sanjiv Kumar is in her house with blood stained clothes Kamlesh was perturbed and by the time Chanchal and Sapna proceeded towards the house of Sapna they met Kamlesh on the way who was returning from the direction of the house of Sapna and requested Sapna to come back so that Kamlesh can give clothes for Sanjiv Kumar which he could change in the house of Sapna. It is also established that she handed over a set of clothes for Sanjiv Kumar which PW2 Sapna carried. The further circumstance

which is established from the prosecution evidence is that when the police with other witnesses knocked the door of Kamlesh who was found in a very perturbed condition and initially resisted the entry of police into her house even though the police said her house would be searched. Ultimately the blood stained clothes of accused Sanjiv Kumar were recovered from the bath room of her house which had been soaked with water in a bath tub. These two circumstances fully establishes the charge under Section 201 IPC, so far as accused Kamlesh is concerned. In the aforesaid circumstances, we have no hesitation in affirming the conviction of accused Kamlesh under Section 201 IPC. But, so far as the sentence is concerned, she has already undergone imprisonment for about 4 years and 8 months, as stated to us in the course of hearing, by Shri Sharma, learned counsel appearing for accused Kamlesh, and we think that the justice will be fully met if her sentence is modified to the sentence already undergone.

18. So far as accused Lekh Raj is concerned, we do not find an iota of material to indicate that he knew about the commission of offence by accused Sanjiv Kumar when he took him on his scooter and, therefore, the conviction of accused Lekh Raj of the offence under Section 212 IPC is wholly unsustainable in law. It may be stated that to attract the provisions of Section 212 IPC it is necessary to establish commission of an offence, harboring or concealing the person known or believed to be the offender, and such concealment must be with the intention of screening him from legal punishment. The evidence adduced by the prosecution in this regard is wholly insufficient to establish either of the aforesaid ingredients, though all the ingredients are necessary to be proved. In this view of the matter the conviction of accused Lekh Raj for the offence under Section 212 is unsustainable and, we accordingly set aside the conviction and sentence and acquit him of the charge.

19. In the net result, therefore, the conviction of accused Sanjiv Kumar and accused Kamlesh under Section 302/120B IPC and the sentence passed thereunder is set aside. Accused Sanjiv Kumar, however, is convicted under Section 302 IPC and sentenced to imprisonment for life. The conviction of accused Kamlesh under Section 201 IPC is upheld, but the sentence is modified to the period already undergone. She may be released forthwith unless required in any other case. The conviction and sentence of accused Lekh Raj under Section 212 IPC is set aside and in acquitted of the charge levelled against him. All the appeals are disposed of accordingly.