A

STATE OF U.P.

v.

KAPIL DEO AND ANOTHER

AUGUST 21,1991

B [KULDIP SINGH AND MADAN MOHAN PUNCHHI, JJ]

Criminal Law: Indian Penal Code, 1960—Sections 302, 302 read with 34 and 201 read with 34—Charge of murder and causing disappearance of evidence thereof—Prosecution evidence as to offence of murder rejected—Accused acquitted of charge of murder—Whether could be convicted for offence of causing disappearance of evidence of murder—Acquittal of one of the accused—Effect on co-accused.

C

The respondents in the two appeals were charged under Section 302, Section 302 read with Section 34 and Section 201 read with Section 34 IPC for the murder of their domestic help and for causing disappea-

D **rance of the commission of offence.**

The trial court acquitted all the four accused of the offence under Section 201 read with Section 34 IPC but convicted one of them under Section 302 and the other three for the offence under Section 302 read with Section 34 and sentenced all of them to death. The High Court

E **upheld the conviction of the accused under Section 302, but reduced his sentence to life imprisonment. It acquitted the other three accused of the offence under Section 302 read with Section 34 IPC.**

The main accused, who was convicted under Section 302 IPC, appealed to this Court against his conviction. The State also filed an

F **appeal before this Court against the acquittal of two of the three accused for offence under Section 302 read with Section 34 IPC. Since the respondents in the State's appeal could not be served by the time the appeals came up for disposal, this Court heard the appeal of the lone accused and taking into consideration the evidence which had bearing on the accused's appeal only, allowed his appeal.**

G

Subsequently, the State filed an appeal before this Court against the trial court's acquittal of the accused for the offence under Sec. 201 read with section 34 IPC.

Dismissing the appeals, this Court,

H

HELD: 1.1 The prosecution case collapsed so far as one of the accused, who was assigned the offensive part of the crime of murder, is concerned, and he stands acquitted of the charge of murder. It is he who was seen cutting the throat of the deceased with a big knife, and escaping from the scene of the occurrence, carrying a blood-stained knife in his hand, and was sought to be apprehended by the eye-witnesses and others collected there. When the evidence against him, occular as well as circumstantial, has cautiously been weighed by this Court resulting in his acquittal, it is difficult to convict the said accused for offence under section 201 read with 34 IPC. [697D-F]

Duvvur Dasratharammareddy v. *State of Andhra Pradesh*, [1971] 3 SCC 247, relied on.

1.2 As regards the other accused, on careful consideration of the evidence and other material on record, a different view than the one taken by the Sessions Court cannot be taken. The trial court when grappling with the matter took note of the evidence of the witnesses of recovery, namely, P.Ws 5 and 11, wherefrom it was clear that a dead body was found inside a bag kept in the trunk. That by itself was of no consequence and at best gravely suspicious. Its finding was that a dead body in a bag put inside a trunk was recovered from a room of the house and further the part played by the accused in the placing of the dead body in that trunk was evidently not proved. Their individual statement to P.W. 11 which alone, if at all admissible, does not reveal any disappearance of evidence so as to screen the offender of murder. This state of evidence is insufficient to prove that two of the respondents to have placed the dead body in the trunk. Having regard to the evidence of P.Ws. 5 and 11 there is no reason to differ from the views expressed by the trial court and which was a possible view. As regards the fourth accused there is no evidence against her. [398F-H, 699A-D]

Vidya Sagar v. *State of U.P.*, AIR 1977 SC 1116 at pages 1118-1119, referred to.

2. One of the circumstances which weighed in favour of the main accused, who was acquitted was that he alone was not in the house to be solely responsible for the murder when committed and at that time besides him therein were said to be the two respondents. What has been spelled out in favour of that accused can with equal force apply to the case of the two respondents. If the so-called opportunity to likewise commit the crime was available to the two respondents and not a circumstance to hold the accused who was acquitted, as one of the

inmates of the house guilty, it can conversely be said in the same manner about the guilt of the two respondents. Their being available in the house *per se* was not enough to hold them guilty for the offence of the murder. Thus, there is no occassion to convict the two respondents for the offence of murder in view of the verdict of acquittal in favour of the other accused. There was hardly any evidence to connect the three accused to the murder of the deceased, especially when the eye-witnesses' account given by PWs 1 to 3 was not very reliable. Besides, from the circumstances that the three accused were inside the house at the time of the murder, it could not be inferred that they were accessories to the crime before the occurrence took place nor could it be inferred that the murder was committed in furtherance of the common intention of all. In the circumstances, the High Court was right in giving benefit of doubt to the three accused and acquitting them of the charge of murder and accordingly the respondents' acquittal of the two respondents is maintained. [697H, 698A-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 579 of 1976.

From the Judgment and Order dated 6.4.1971 of the Allahabad High Court in Criminal Appeal No. 2393 of 1970 and Referred No. 174 of 1970.

WITH

CRIMINAL APPEAL No. 99 of 1987.

Manoj Swarup, Ms. Lalita Kohli, Ms. P. Chaudhary and A.S. Pundir (N.P.) for the Appellant.

G. Prakash for the Respondents.

The Judgment of the Court was delivered by

PUNCHHI, J. These two Criminal Appeals have common roots and are being disposed of together. They have arisen in the following circumstances:

Vinod Kumar, aged about 12 years, was a poor boy of Village Lar, District Deoria, in the State of Uttar Pradesh. He is the victim in the instant crime. On or about July 1, 1968, the said Vinod Kumar was employed by Kapil Deo accused as a domestic help in his house at Village Lar. Kapil Deo, his wife Smt. Sheo Kumari, his son Vidya Sagar, and his brother Ramapati were living together in that house at village Lar. All the four are the accused involved herein. At about 4.00 p.m. on July 16, 1968, Vinod Kumar deceased and Vidya Sagar

accused were playing with some other boys near the house of Kapil Deo. Kapil Deo and Ramapati on arrival there scolded the boys for playing there and took Vinod Kumar, servant and Vidya Sagar, accused in the house asking the other boys to scatter away. Those boys included Mohan Singh, P.W. 1, Hridyanand, P.W. 2 and Akhilanand, P.W. 3. Despite there being asked to go away, still the boys resumed their play after a while. They then heard the cry of Vinod Kumar and by climbing a grilled window (jangla) of the house of the accused, they could see the crime being committed in another room of the house which had a door ajar making vision possible. Their version was that they had seen Kapil Deo and Ramapati holding Vinod Kumar against the wall of the room and Vidya Sagar cutting the throat of Vinod Kumar with a big knife. The eye witnesses raised an alarm. Vidya Sagar, accused thereafter came out from the house while wearing an under-wear with a blood-stained knife in his hand and thereafter took to his heals. Smt. Sheo Kumari accused closed the doors of the room and the window. In the meantime some people already assembled outside the house tried to apprehend Vidya Sagar accused but having failed to do so, one of them Mohan Singh, P.W. 1 went to Police Station, Lar and lodged the First Information Report. After the necessary investigation and collection of material, the four accused were committed for trial to the court of Session at Deoria, Uttar Pradesh.

At the trial, all the four accused were charged under section 302, section 302 read with section 34, I.P.C. and section 201 read with section 34, I.P.C. The cause for charge under section 201 read with section 34 I.P.C. was that on interrogation made from Kapil Deo and Ramapati accused they pointed out a trunk, in which the dead body of Vinod Kumar was found contained in a gunny bag, in a room of their house. The trunk contained as well a blood-stained Pyjama of Vidya Sagar.

The Trial Judge vide his judgment dated October 27, 1970 convicted Vidya Sagar, accused for an offence under section 302 I.P.C. and the remaining three accused under section 302 read with section 34 I.P.C.; sentencing all of them to death. He, however, acquitted all the four accused of the offence under section 201 read with section 34 I.P.C.

On reference to the High Court for confirmation of the death sentence as well as on appeal by all the accused, the High Court of Allahabad on April 6, 1971 upheld the conviction of Vidya Sagar, accused for offence under section 302 I.P.C. reducing his sentence to

A imprisonment for life. The remaining three accused were acquitted of the charge under section 302 read with section 34 I.P.C.

The matter was brought to this Court by Vidya Sagar, accused in Criminal Appeal No. 236 of 1971 against the aforesaid judgment of the High Court. The State of Uttar Pradesh as well filed Criminal Appeal B No. 579 of 1976 against Kapil Deo and Ramapati, accused leaving aside Smt. Sheo Kumari, accused. That appeal on admission was ordered to be heard with Criminal Appeal No. 236 of 1971 preferred by Vidya Sagar. Since respondents in Criminal Apeal No. 579 of 1976, being Kapil Deo and Ramapati, could not be served by the time when both the matters came up for disposal on 22-2-1977 before a bench of C this Court, the appeal of Vidya Sagar alone was heard and was allowed. The evidence which had bearing in the appeal of Vidya Sagar, accused alone was scrutinised and opined upon. The High Court on its part placing no reliance on the eyewitnesses had upheld the conviction of Vidya Sagar, accused because of four circumstances enumerated in judgment reported as *Vidya Sagar* v. *State of U.P.*, AIR 1977 SC 1116 D at pages 1118-1119 and this court, one by one, demolished all the circumstances concluding as follows:

> "It would thus appear that the four pieces of circumstantial evidence on which reliance has been placed by the High Court for upholding the conviction of appellant Vidya Sagar, could E not be said to prove beyond reasonable doubt that he committed the murder of Vinod Kumar. Those circumstances do not answer the well-established test that where evidence is circumstantial, it must be consistent with the sole hypothesis that the accused is guilty of the crime charged. Moreover, as has been pointed out, the High Court did not examine the other evi- F dence and circumstances referred to above which had a bearing on the guilt of the appellant."

We would not like to burden this judgment with the details of those four circumstances since resort can be had to the reported judgment. The end result was the acquittal of Vidya Sagar accused. While G disposing of the case, the Bench took care to observe that nothing in the said judgment be taken to have any bearing on the appeal of the State against the acquittal of accused Kapil Deo and Ramapati. The bench also observed that it may, perhaps, require in that appeal, examination of the question whether by reason of the concealment of the dead body in the trunk those two persons could or could not be H convicted under section 201 I.P.C. even if they were not held guilty of the offence under section 302 I.P.C.

Kapil Deo and Ramapati, accused-respondents in Criminal Appeal No. 579 of 1976 were served after a long lapse of time. On January 29, 1986, a bench of this Court became seisen of the matter. It perhaps was made aware that the acquittal of the accused-respondents by the Trial Judge, under section 201 read with section 34 I.P.C. had not been challenged by the State of U.P.. by filing an appeal against the acquittal before the High Court, which fact had specifically been taken note of by the High Court in its judgment dated April 6, 1971. For that reason, the bench granted time to the State of U.P. for filing special leave petition against the judgment of the learned Sessions Judge acquitting all the four accused-respondents of the charge under section 201 read with section 34 I.P.C. ordering at the same time that the said special leave petition when filed should be heard alongwith Criminal Appeal No. 579 of 1976. On the filing of such application leave was granted and Criminal Appeal No. 99 of 1977 as its product has been placed before us for disposal alongwith Criminal Appeal No. 579 of 1976.

We have heard learned counsel for the parties and have perused the evidence and material on the record. The fact staring at us is that the prosecution case collapsed so far as Vidya Sagar, accused is concerned and he stands acquitted of the charge of murder. It is to be borne in mind that he prominently was assigned the offensive part of the crime of murder. It is he who was seen cutting the throat of the deceased with a big knife. It is he who was seen escaping from the scene of the occurrence carrying a blood-stained knife in his hand. It is he who was sought to be apprehended by the eye-witnesses and others collected there. When the evidence against him, occular as well as circumstantial, has cautiously been weighed by this Court resulting in his acquittal, we find it difficult to convict the said accused for offence under section 201 read with section 34 I.P.C. This Court though slightly in different circumstances in *Duvvur Dasratharammareddy* v. *State of Andhra Pradesh*, [1971] 3 SCC 247, observed as follows:

> "If the evidence relating to the offence of murder and disappearance of evidence is the same and the case of the prosecution regarding the offence of murder is not accepted, it follows that the accused cannot be convicted for the offence under Section 201, I.P.C."

One of the circumstances which weighed in favour of Vidya Sagar, accused was that he alone was not in the house to be solely responsible for the murder when committed and at that time besides him therein

were said to be Kapil Deo and Ramapati, accused. What has been spelled out in favour of Vidya Sagar can with equal force apply to the case of Kapil Deo and Ramapati, accused. If the so called opportunity to like-wise commit the crime was available to Kapil Deo and Ramapati and not a circumstance to hold Vidya Sagar as one of the inmates of the house guilty, it can conversely be said in the same manner about the guilt of Kapil Deo and Ramapati. Their being available in the house *per se* was not enough to hold them guilty for the offence of murder. Thus there is no occasion to convict Kapil Deo and Ramapati, accused-respondents in Criminal Appeal No. 579 of 1976 for the offence of murder in view of the verdict of acquittal in favour of Vidya Sagar. The High Court itself had observed that there was hardly any evidence to connect Kapil Deo, Ramapati & Smt. Sheo Kumari, accused with the murder of Vinod Kumar especially when the eye witnesses account given by P.Ws. 1 to 3 was not very reliable. And further that from the circumstance that the aforesaid three accused were inside the house at the time of the murder it could not be inferred that they were accessories to the crime before the occurrence took place nor could it be inferred that the murder was committed in furtherance of the common intention of all. On this basis, these three accused were given the benefit of doubt and acquitted of the charge of murder and the view of the High Court, appears to us to be correct. The acquittal of Kapil Deo and Ramapati, respondents in Criminal Appeal No. 579 of 1976 thus must be and is hereby maintained, dismissing the Criminal Appeal No. 579 of 1976.

With regard to Criminal Appeal No. 99 of 1987, it is significant to notice that the Government had not filed any appeal against the order of acquittal of the accused of the charge under section 201 read with section 34 I.P.C. even though room had been kept in these proceedings to examine the question whether the accused could be convicted under section 201 read with section 34 I.P.C. Still on careful consideration of the evidence and other material on record we are not pursuaded to take a different view than the one taken by the Court of Session. Section 201 I.P.C. provides that whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall suffer imprisonments of the kind, mentioned in the three sub-portions of the provision, in the circumstances suggested. The Trial Judge when graplling with the matter took note of the evidence of the witnesses of recovery, namely, Chander

Shekhar, P.W. 5 and Sub-Inspector, Markandey Singh, P.W. 11 wherefrom it was clear that a dead body was found inside a bag kept in the trunk. That by itself was of no consequence and at best gravely suspicious. Its finding was that a dead body in a bag put inside a trunk was recovered from a room of the house and further the part played by the accused in the placing of the dead body in that trunk was evidently not proved. Their individual statement to P.W. 11 Markandey Singh "I have kept the dead body, could give it", which alone, if at all admissible, but not holding so, does not reveal any disappearance of evidence so as to screen the offender of murder. This state of evidence is insufficient to prove the accused Kapil Deo and Ramapati to have placed the dead body in the trunk. We see no reason to differ from the views expressed by the Trial Judge, and which was a possible view, having regard to the evidence of Chander Shekhar and Markandey Singh, P.Ws. Besides the ratio in *Duvvur Dasratharammareddy's* case (supra) too comes in aid of the accused-respondents so as to merit dismissal of Criminal Appeal No. 99 of 1987 as relating to them. There is no evidence against Sheo Kumari accused of any kind worth discussing.

A B C D

For the foregoing reasons, we dismiss both the appeals Nos. 579 of 1976 and 99 of 1987.

N.P.V. Appeals dismissed.