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CrI.A.No. 1183 OF 2001  
Item No.101

Court No. 10

Section II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.1183 of 2001@@  
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Madho Singh

Appellant (s)

Versus

State of Rajasthan

Respondent (s)

( With appln. for bail and with Office Report )

WITH  
CrI.A.No.1184/2001 - With Office Report

Dated: 26/09/2002: These matters were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) Mr. Doongar Singh, Adv.  
M/s PI. Jose, A. Radhakrishnan, Adv.  
Mr. VJ. Francis, Adv.

M/s BS. Jain, Ajay Veer Singh,  
Goodwill Indeevar, Adv.  
Dr.(Mrs.) Vipin Gupta, adv.

For Respondent (s) Mr. Alok Bachawat, Adv.  
M/s Ranji Thomas, Sushil Tekriwal, JM.Rao, Adv.  
Mrs. Bharati Upadhyay, Adv.

UPON hearing counsel the Court made the following  
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Mr. Doongar Singh, the learned counsel for the  
appellant in CrI.a.No.1183 of 2001 commenced arguments at  
10-30 a.m. and concluded his arguments at 11-35 a.m.  
Thereafter, Mr. Alok Bachawat, the learned counsel appearing  
for the State argued upto 11-50. Hearing concluded. Appeals  
allowed.

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(S.Thapar) (V.P. Tyagi) @@  
AA  
PS to Registrar Court Master@@  
AA

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1183 OF 2001@@  
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Madho Singh ... Appellant (s)

Versus

State of Rajasthan ... Respondent (s)

( With Crl.A.No.1184/2001 )

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Appellants in both these appeals were convicted by Sessions Court for offences under Sections 302/34, 323/34 and 341/34 of the Indian Penal Code. For offence under Section 302 read with 34, life imprisonment with fine of Rs.25,000/- (twenty five thousand) on each of them was imposed and in default for payment of fine, they were directed to undergo imprisonment for a period of three years. For other two offences, one year's simple imprisonment with fine of Rs.500/- and one month's simple imprisonment with fine of Rs.500/- was respectively imposed. All substantive sentences were ordered to be run concurrently. The appeals challenging the conviction and sentence passed by the Sessions Court were dismissed by the High Court and, therefore, these appeals have been filed on grant of leave.

The prosecution case in brief is that the appellants visited the house of deceased Om Singh at about 10-30/11-00

p.m. on Ist May, 1999. Om Singh went with them on a motor cycle. All the three had friendly relations. At 7-00 a.m. on 2nd May, 1999 appellant - Nathu Singh Rathore came to the house of Om Singh and informed his son Sher Singh (PW1) that Om Singh had an accident and was lying at Khirni Phatak in Jhotwara locality of Jaipur. That place is near the house of appellant - Madho Singh. Sher Singh accompanied by his neighbourer - Vikram Singh and appellant Nathu Singh left for the said place. On reaching there they learnt that Om Singh had been taken to Deep Hospital at Jaipur by appellant Madho Singh. They went to the said hospital. On reaching Deep Hospital it was learnt that since the condition of Om Singh was serious he had been referred to SMS Hospital and had been taken to that hospital. Thus, PW1 went to SMS Hospital. For the first time a report was lodged by Sher Singh on 3rd May, 1999 that he had learnt from a blank telephone call that in fact his father had been given a beating in the house of Madho Singh and had been thrown out and that it was not a case of accident. Om Singh remained in the hospital till his death. He ultimately died on 6th May, 1999 at 8-30 p.m. After the death, the accused persons were arrested, charged and convicted and sentenced as noticed hereinbefore.

While in Deep Hospital no treatment seems to have been

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given to Om Singh. That is the statement of PW11 - Dr. Lakhani Lal. Further statement of PW11 is that face of Om Singh was crushed. He deposed that no treatment was given to him and the hospital authorities asked Om Singh to be taken to SMS Hospital, although no slip of this reference was prepared. Further it appears from the testimony of PW15 - Dr. N.S. Disaniya that Om Singh was examined by him on 4th May, 1999, on the PW15 being called from Neuro Surgery Ward. On examination of Om Singh the injuries which were found on his person were stated by the witness. There is no evidence on record whether any treatment at all was given to Om Singh prior to 4th May, 1999. The post-mortem of the body of Om Singh was also conducted by PW15. It is in his evidence that on examining the chest he found the left ribs were fractured. The cause of death was stated to be coma as a result of head injuries. Further the witness has deposed that the head injuries can also be sustained in accident.

PW1 though in the report lodged on 3rd May, 1999, to the police, had stated that his father Om Singh was carrying Rs.3000/- in cash and was wearing a H.M.T. wrist watch which were missing from his person, however, later on 22nd May, 1999 Sher Singh gave a report to the police that the cash and watch had been found from the house and had not been stolen from the

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deceased and, therefore, that aspect may be deleted from the First Information Report.

The primary, if not solitary basis of the conviction of the appellants is on the theory of last seen as the deceased left his house with the appellants at about 11-00 p.m. on 1st May, 1999. In order to convict the appellants for an offence under Section 302 the first and foremost aspect to be proved by the prosecution is the homicidal death. The evidence on record produced by the prosecution falls short of the proof of homicidal death of Om Singh. According to PW11 - Dr. Lakhani Lal, his face had been crushed. According to testimony of PW15 - Dr. Disaniya, the injuries received by the deceased could be sustained in the accident. Besides these two witnesses, there is no evidence to prove that it was a case of homicidal death. The prosecution came out with a specific case that Om Singh was given beating in the house of Madho Singh and thereafter thrown out. Though blood stained soil outside the house of Madho Singh was recovered, but it was not proved. PW4 - Rajinder Singh and PW5 Prem Singh were examined to prove the prosecution case. They turned hostile and did not support the prosecution. The prosecution failed to prove that the place of occurrence was the house of Madho Singh. It is not permissible for the prosecution then to

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shift and take a stand that it was not the house of Madho Singh, the deceased may have been given beating at a different place. In fact no place of occurrence has been proved by the prosecution. Although the information about the accident is alleged to have been given at 7-00 a.m. on 2nd May, 1999 and on the same date PW1 reached SMS Hospital, the report that was lodged was only on 3rd May, 1999. The reason given in the

report that on a blank telephone call having been received, Sher Singh had learnt, that it was not a case of accident, had been disbelieved by the Courts below. Further, clothes of the deceased are said to have been taken from his younger brother Pappu Singh on 5th May, 1999. Even that fact has not been proved. Pappu Singh has not been examined. In any case those clothes of the deceased would be hardly any evidence to connect the appellants with the alleged murder of the deceased by them.

In the absence of proof of homicidal death the appellants cannot be convicted merely on the theory of last seen - they having gone with the deceased in the manner noticed hereinbefore. The appellants' conviction cannot be maintained merely on suspicion, however strong it may be, or on their conduct. These facts assume further importance on account of absence of proof of motive particularly when it is

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proved that all the three were good friends for over a decade.

In view of the aforesaid circumstances, it is not possible to sustain the impugned judgment and sentence. Therefore, setting aside the impugned judgment of the High Court affirming that of the Sessions Court, we allow these appeals and acquit the appellants giving them benefit of doubt. The appellants shall be set free forthwith if not required in any other case.

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.....J  
(Y.K. Sabharwal)

New Delhi,  
September 26, 2002

.....J  
(Shivaraj V. Patil)