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Two persons were convicted for the murder of Harband Singh. A1-Swarn Singh was convicted with the aid of Section 34 while A2 Mahinder Singh was convicted for the murder directly. A division bench of the High Court confirmed the conviction and sentence of life imprisonment and dismissed the appeal filed by both of them.

The prosecution case is this: There was some dispute regarding land between the first accused Swarn Singh and his sister-in-law-Bhajno. On 12th September, 1992 deceased Harband Singh, his brother and the brother of Mahinder Singh A2, went to the house of the wife of first accused Swarn Singh. After chatting for some time they went out for a stroll. Deceased wanted to go ahead for answering the call of nature. It was at the said stage that A1 and A2 had taken him to a room attached to the tube well belonging to A1-Swarn Singh where he was murdered. The head of the deceased was held by A1-Swarn Singh when A2-Mahinder Singh inflicted blows on the neck portion with a spade.

:2:

Hearing the commotion, brother of the deceased ran to the place. He is PW2. He saw the incident. The FIR was lodged by PW12-Charan Singh the brother of first accused A1-Swarn Singh. Though the public prosecutor in the trial court did not choose to examine PW12- Charan Singh as he got the information that Charan Singh was won over by the defence, the High Court wanted the evidence of Charan Singh to be recorded when the matter was pending in appeal. Hence Charan Singh was examined by the trial court on the direction given by the High Court. But Charan Singh did not support the prosecution case and he dis-owned the FIR under his signature. The consequence is that evidence of PW12 Charan Singh has become totally useless for the prosecution. Even the FIR has lost its evidentiary value because its author had disowned it completely.

Entire case of the prosecution now depends upon the reliability of the testimony of PW2 Harbhajan Singh- the brother of the deceased. We ascertained whether any other circumstance could be ferreted out from the prosecution evidence to seek corroboration of the evidence of PW2. Even the evidence relating to recovery of the spade has unfortunately become un-usable for the prosecution as the spade did not contain any blood. The statement of A2 which led to the recovery of spade from

:3:

the room attached to the tube well is merely that "I have kept the spade in the tube well room". That is not an unnatural conduct or even an incriminating circumstance, for, it is not unusual for any person to keep a spade in such a room.

We also ascertained whether there is any other circumstance such as the statement of the deceased, or that anybody had seen the accused leaving the tube well room soon after the occurrence etc., etc. we are told that there is no such evidence at all.

Thus we are left with the only evidence of PW2-Harbhajan Singh. Unless his can be treated as belonging to the category of "wholly reliable witness" as envisaged by this Court in Vadivelu Thevar vs. The State@@

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