

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1869 of 2010

OM PARKASHAPPELLANT

VERSUS

STATE OF HARYANARESPONDENT

WITH

CRIMINAL APPEAL No.740 OF 2016

(Arising out of SLP(Crl.)No.10159 of 2010)

STATE OF HARYANAAPPELLANT

VERSUS

OM PARKASHRESPONDENT

O R D E R

Leave granted in SLP(Crl.)No.10159 of 2010.

Since both the appeals emerge out of the same occurrence, for which a single trial was conducted by the Sessions Judge, Narnaul, we are satisfied in considering and disposing of the two appeals by a common order.

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The instant appeals arise out of an incident which allegedly took place on 29.02.2000, at village Kamania, under Police Station Nangal-Chaudhary. In the said incident, Kailash is stated to have been murdered. The information of the occurrence was recorded in a First Information Report dated 01.03.2000, at about 11.20 A.M., by Ramautar-P.W.1. Consequent upon the prosecution leading its evidence, and the recording of the statement of the appellant - Om Parkash, under Section 313 of the Criminal Procedure Code, the Sessions Judge, Narnaul, by an order dated 08.05.2001, having found the appellant guilty of being responsible for the murder of Kailash, inter alia convicted him under Section 302 of the Indian Penal Code, and ordered him to suffer imprisonment for life. The accused - appellant was also imposed a fine of Rs.1000/-, and in default of payment of fine, he was to undergo further rigorous imprisonment for three months.

The appellant approached the High Court by preferring Criminal Appeal No.314-DB of 2001. The above appeal was partly allowed, inasmuch as, the conviction of the appellant under Section 302 of the Indian Penal Code, was altered to Section 304 Part-I of the Indian Penal Code. His sentence was accordingly reduced from life imprisonment, to seven years rigorous imprisonment, the other sentence remained the same as directed by the trial court.

Dissatisfied with the judgment rendered by the High Court dated 21.10.2009, the accused/appellant - Om Parkash preferred Criminal Appeal No.1869 of 2010, so as to assail his conviction under Section 304 Part-I of the Indian Penal Code. The State of Haryana independently preferred SLP(Crl.)No.10159 of 2010, wherein,

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it has prayed for setting aside the impugned order passed by the High Court, so as to seek the conviction of the accused - Om Parkash under Section 302 of the Indian Penal Code.

A perusal of the judgment rendered by the Sessions Judge, Narnaul, as also, by the High Court, reveal, that the guilt of the accused/appellant-Om Parkash was determined on the basis of circumstantial evidence. The circumstantial evidence taken into consideration, can be examined and dealt with in four separate categories.

Firstly, the prosecution led evidence to demonstrate, that the appellant was last seen in the company of the deceased - Kailash, immediately prior to his being murdered. In this behalf, the prosecution relied upon the statements of Ram Partap-P.W.8 and Nathu Ram-P.W.12. Ram Partap-P.W.8, had seen the appellant - Om Parkash, in the company of the deceased Kailash, when he had gone to purchase liquor, from the residence of Raghbir-P.W.9. Nathu Ram -P.W.12, confirmed having seen the accused - Om Parkash entering

the residence of Kailash at 11.00 P.M. The deceased Kailash was not seen alive thereafter.

In order to dispel the veracity of the 'last seen' evidence, learned counsel for the appellant has placed reliance on the statement of Raghbir-P.W.9, who asserted during the course of his deposition, that neither Ram Partap-P.W.8 nor the appellant Om Parkash, and not even Kailash, had visited his residence to purchase liquor. It is not possible for us to accept the submission advanced by the learned counsel for the appellant, for the reason, that it was not open to Raghbir-P.W.9, to truthfully confirm the

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above factual position, because of the statement of Ram Partap-P.W.8, that Raghbir-P.W.9 used to sell liquor without any formal licence. It was obviously to save his own implication, that Raghbir-P.W.9 could not truthfully disclose the factual position. Learned counsel for the appellant has not invited our attention to any reason or evidence to doubt the statement of Ram Partap P.W.8. In the above view of the matter, we are satisfied in concluding the veracity of the statements of Ram Partap-P.W.8 and Nathu Ram-P.W.12 to demonstrate, that the accused/appellant Om Parkash, and the deceased Kailash, were last seen together before the occurrence. Our reason to do so, is also based on the acknowledgement by the accused Om Parkash in the extra-judicial confession made by him to Ram Sarup P.W.17.

Secondly, the prosecution has placed emphatic reliance on the recovery of the incriminating articles, made on the disclosure of the accused/appellant Om Parkash. In this behalf, it is pertinent to notice, that the weapon - wooden Spaya \235 (leg of bed/cot), battery and iron lamp, were recovered from an abandoned dry well, consequent upon the disclosure made by the appellant Om Parkash. The recovery, at the instance of the accused Om Parkash, was sought to be established by Vijay Singh-P.W.16, and Ram Sarup-P.W.17. They went on to further narrate, that despite the appellant Om Parkash having shown the place where he had disposed of the articles, he had declined to bring out the same. Resultantly, it was Vijay Singh-P.W.16, who went down into the dry well, and recovered the articles. It is therefore, apparent, that the prosecution fully established the recovery of articles,

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relatable to the occurrence, at the instance of the accused Om Parkash. We therefore, affirm the conclusions recorded by the courts below, with reference to the recovery of the articles.

Thirdly, the Sessions Judge, Narnaul, as also, the High Court, gave credence to the extra-judicial confession made by the appellant Om Parkash, to Ram Sarup-P.W.17. We have been taken through the deposition of Ram Sarup-P.W.17, before whom the appellant - Om Parkash had made his extra-judicial confession. The manner of narration of the occurrence, at the behest of the appellant Om Parkash to Ram Sarup-P.W.17, who then facilitated the surrender of the accused Om Parkash, leaves no room for any doubt, that the extra-judicial confession made by the appellant Om Parkash to Ram Sarup-P.W.17, was truthful. It also tallied with the statements of the different prosecution witnesses.

Lastly, learned counsel for the appellant painstakingly took us through the testimony of P.W.3-Dr.Ravi Sudan Sharma, in order to demonstrate, that the injuries allegedly inflicted on the deceased Kailash, could not have been caused by the wooden Spaya \235 as alleged by the prosecution. In this respect, it would be relevant to mention, that the above issue was also raised during the cross-examination of Dr.Ravi Sudan Sharma-P.W.3. Dr.Ravi Sudan Sharma had acknowledged, that he and Dr.Deepak Prakash, were shown the Swoden paya \235, whereupon they had given their opinion Ex.PF/1, that the incised injuries suffered by the deceased Kailash, could have been caused by the wooden Spaya \235.

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For the reasons recorded hereinabove, we find no merit in

