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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-D-639-DB-2003 (O&M)
Reserved on :-17.07.2024
Date of Decision : 29.07.2024

Rajinder Kumar

....Appellant

VERSUS

State of Punjab

....Respondents

CORAM : HON’BLE MR. JUSTICE SURESHWAR THAKUR
HON’BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Dolli Sharma (Amicus Curiae)
for the appellant.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

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SUDEEPTI SHARMA, J.

1. The instant appeal is preferred by the appellant for setting aside the judgement of conviction and order of sentence dated 08.05.2003, whereby the learned Additional Sessions Judge, (Fast Track Court), Sangrur, has sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three years under Section 302 of the Indian Penal Code, 1860 (for short, ‘IPC’).

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that Ujagar Singh and his brother Nanak Singh have taken 9-½ Qillas of land from Amarjit Singh, Sarpanch, on lease for

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the year of 2000 and an electric motor was fitted in this land for running tubewell. A kotha was also constructed in which, Piara Singh father of Ujagar Singh & Nanak Singh used to sleep at night. On 14.03.2000, as usual, Piara Singh, after taking meals, went to the fields at about 7.00 PM. Rajinder Kumar accused was employed as a servant with them who used to reside in the same kotha of tubewell. In the morning of 15.03.2000, at about 8.00 a.m Ujagar Singh & Nanak Singh went to the fields with tea of Piara Singh, but they found that their father Piara Singh was lying in the pool of blood in the kotha. They also found multiple injuries on head, forehead and face of their father Piara Singh. Rajinder Kumar accused was not found there and after leaving Nanak Singh, near the dead body, Ujagar Singh went to the police station to lodge report, when, ASI Kashmir Singh met him near railway crossing, Sunam. Ujagar Singh made statement Ex.PE before ASI Kashmir Singh on the basis of which formal case was registered against the accused. After completion of the investigation, the accused was sent up for trial.

3. Copies of the documents as required under Section 173 Cr.P.C were duly supplied to the accused. There being a prima facie case under Section 302 IPC against Rajinder Kumar accused, therefore, he was charged accordingly to which he pleaded not guilty.

4. The prosecution examined total 15 witnesses and tendered into evidence the report of the Chemical Examiner Ex.PX and report of the Director, Finger Prints Bureau, Phillaur Ex.PY.

5. After hearing the parties and considering the evidence on record, the learned Trial Court found the accused to be guilty under Section 302 IPC and

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sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three years. Hence the present appeal.

SUBMISSIONS OF THE COUNSELS

6. Learned amicus curiae for the appellant submits that the appellant has been convicted on the basis of extra-judicial confession and the evidentiary value of such confession depends upon the person to whom it is made. In the present case, Manjit Singh (PW-10) to whom extra-judicial confession was made, in his cross examination stated that he had no relation with the accused. She further contends that so far as recovery of alleged weapon of crime i.e “*Hathora*” is concerned, disclosure statement reveals that there are contrary testimonies regarding the same. Further that Harpal Singh (PW-12) and Manu Singh (PW-15) have seen the appellant with “*Hathora*”, and if clothes were blood stained then why did they not complain to any police authority. She further contends that since the appellant was last seen with the deceased and was not found at the spot after the death, it would not lead to the presumption of the appellant being guilty. She further contends that no motive is attributed by the prosecution on the appellant for the commission of the alleged murder. Therefore, she prays for setting aside of the judgment and order passed by the Court below. She has relied upon the following judgments:-

i) ***Pawan Kumar Chourasia Vs. State of Bihar [2023 SCC***

OnLine Supreme Court 259] whereby the Hon’ble Supreme Court in para 5 held

as under:-



"5. As far as extra-judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra-judicial confession is corroborated by other evidence on record, it acquires more credibility."

ii) *Raja Naykar Vs. State of Chhattisgarh [2024 LiveLaw (SC)*

60] whereby the Hon'ble Supreme Court held as under:-

"9. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt."



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* * * *

20. As already discussed hereinabove, merely on the basis of suspicion, conviction would not be tenable. It is the duty of the prosecution to prove beyond all reasonable doubt that it is only the accused and the accused alone who has committed the crime. We find that the prosecution has utterly failed to do so.”

iv) Nandu Singh Vs. State of Madhya Pradesh (Now Chhattisgarh) [2022 LiveLaw (SC) 229] whereby the Hon’ble Supreme Court in para No.10 held as under:-

“10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.”

7. *Per contra*, learned counsel for the respondent-State submits that it is evident from the statement of complainant - Ujagar Singh (PW-11) that on the last night, fight took place between the deceased and Rajinder Kumar (accused). He further contends that when the dead body was recovered, the accused was not present there. Further that the accused was seen by Harpal Singh (PW-12) with Hathora and his clothes were drenched with blood. Further that statement of Harpal Singh (PW-12) was corroborated with Manu Singh (PW-15). He further contends that the prosecution witnesses are credible and there is no inconsistency



in their statements and there is no evidence to conclude that occurrence has not taken place and the accused has been falsely implicated. Therefore, he prays that the prosecution has been able to prove its case beyond reasonable doubt and therefore learned Court below has rightly convicted and sentenced the appellant.

8. We have heard learned counsel for the parties and perused the whole record of this case with their able assistance.

ANALYSIS

9. A perusal of post mortem report Ex.PA shows that the cause of death in this case is haemorrhage and shock as a result of injuries which are ante-mortem in nature and are sufficient to cause death in the ordinary course of nature. PW-1 is Dr. Parmod Kumar Chemical Examiner, Civil Hospital, Sangrur who conducted the post mortem. As per his statement the following injuries were noted by him:-

1. *Lacerated wound 8 x 3 cms on the right side of forehead, starting from 2 cms above the lateral end of right eyebrow and going upwards and medially upto the centre of the forehead. Clotted blood was present in and around the wound. On dissection, there was fracture of underlying wound and laceration of meninges and brain tissue was present on the interior of right side. Clotted blood was present in the dissected issues.*

2. *Lacerated wound 2 x 1 cms on the right eyebrow clotted blood was present in & around the wound. On dissection underlying wound was normal.*



3. *A lacerated wound 2 x ½ cms on scalp 10 cms above the root of the nose. Clotted blood was present in and around the wound. On dissection underlying wound was not fractured.*
4. *A lacerated wound 2 x ½ cms on left side of face near the nose. Clotted blood was present in & around the wound. On dissection under lying maxilliary wound was fractured.*
5. *A lacerated wound 5 x ½ cm obliquely placed on left side of the face, starting from the middle of the left eyebrow going downward & laterally. Clotted blood was present in and around the wound. On dissection underlying wound was not fractured.*
6. *A lacerated wound 5 x 2 cm on left side of forehead, 4 cms above the lateral end of left eyebrow. Clotted blood was present in and around the wound. On dissection underlying wound was not fractured.*
7. *A lacerated wound 6 x 2 cm was present in left parietal region. On dissection underlying wound was fractured with laceration of brain issue. Clotted blood was present in and around the wound.*
8. *A lacerated wound 4 x 2 cms over the occiput of skull. Clotted blood was present in and around the wound. On dissection underlying wound was not fractured.*
9. *The bridge of the nose was visibly looking pressed downward with fracture of nasal bone clotted blood was present in both nostrils.*



10. A reddish brown abrasion transversally placed 10 x 14 cms. On the middle of lateral aspect of left thigh. On dissection underlying tissues were not injured.

10. As per his opinion the cause of death was haemorrhage and shock as a result of injuries which are ante-mortem in nature and are sufficient to cause death in the ordinary course of nature. He further stated that he has seen Hammer Ex.P3 and the injuries to the person of deceased could have been caused with Hammer. In his cross-examination, he stated that the injuries on the person of the deceased were with blunt weapon and it could not be said that these were caused with different weapons or not. Further he submitted that injury No.10 can occur due to dragging also and Injury No.7 and 8 can be caused by dragging because these are lacerated wounds and these cannot be caused in a road accident.

11. As per the inquest report, the article found near the dead body was blood stained wooden rod. A perusal of the record further shows that Ex.PF is the affidavit of MHC Sukhchain Singh No.551, Police Station Sunam, wherein he stated that he deposited the parcel of case property containing wooden rod and Hammer together with wooden handle duly sealed with seal bearing impression 'KS' along with sample impression of the seal in the Malkhana. Ex.PW-9/B is seizure memo of wooden rod having blood stained hand impression.

12 Ex.PW-9/E is a statement of accused under Section 27 of the Indian Evidence Act, 1872/disclosure statement that he kept concealed one hammer on the water course canal bank Khadial Road leading to Cheema Poultry Farm by the side of Electric Pole in bushes and only he can get it recovered by pointing out.

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13. Ex.PW-9/F is the recovery memo of Hammer. As per the statement, the accused led the police party to the place mentioned in the statement and got recovered one hammer.

14. Ex.PW-9/K is the site plan of the place from where the accused took out the hammer with his own hand from the bushes.

15. Statement of ASI Kashmir Singh (PW-9) corroborates the statement in the FIR, disclosure statement and recovery of hammer. He stated that on 26.03.2000, he had arrested the accused, who was produced by Manjit Singh (PW-10). In his cross-examination, he had stated that the distance of the place from where hammer was got recovered was 250 yards from Cheema Poultry Farm. He further in his cross-examination stated that it is wrong to suggest that no extra-judicial confession was made by the accused.

16. PW-10 is the statement of Manjit Singh. He identified the accused Rajinder Kumar in the Court and stated that the accused Rajinder Kumar made a confession before him that he committed murder of Piara Singh under whom he was working as 'Seeri' as some quarrel has arisen regarding the Cot. He further stated that the accused told him that he had caused injuries on the person of Piara Singh by means of Hathora (Hammer), and he ran away from the spot and had thrown the Hathora on the Khaidal Road, in the bushes. In his statement, Manjit Singh stated that the accused requested him to produce him (the accused) before the police and he had produced the accused before the police. In his cross-examination, it is stated by him that he has no relation with the accused and the accused had never been under his employment.

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17. Complainant-Ujagar Singh (PW-11) in his statement has stated that about 2-½ years back, they had taken 9-½ killas of land on lease from Amarjit Singh, Sarpanch. Two rooms had been constructed there. His father used to sleep in the kotha. On the intervening night of 14/15.03.2000, after having a meal, his father went to the kotha to sleep. The accused, who was an employee of his father, was also with him. When he along with his brother visited the fields, he found that Rajinder Kumar was fighting with his father for Cot. They intervened and advised Rajinder Kumar to sleep in the other kotha as usual. They then returned to their house. On the next morning, around 8:00 AM, they both went to the field with tea and discovered their father dead lying face down in the pool of blood on the ground. He left his brother Nanak Singh at the scene and while he was going toward the police station, he met the police officer, near Tractor Union, where he made statement, Ex.PE which was read over and explained to him and thereafter he signed, admitting the same to be correct. In his cross-examination, his statement remained uncontroverted.

18. Harpal Singh (PW-12) in his statement stated that about 2-½ years back, while he was going on tractor, along with Manu Singh (PW-15), he saw Rajinder Kumar accused having a Hathora in his hand and his clothes were blood stained. In his cross-examination, his statement remained uncontroverted.

19. Nanak Singh (PW-14) in his statement has supported the testimony of his brother Ujagar Singh (PW-11), who is complainant in the present case.

20. Manu Singh (PW-15) in his statement corroborated the testimony of Harpal Singh (PW-12).



21. Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, laid down the following five golden principles i.e. the **panchsheel** of the proof of a case based on circumstantial evidence:

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

CONCLUSION

22. On the perusal of the record and judgment of the trial Court, this Court concludes as under:-

- i) The statement of Ujagar Singh complainant (PW-11) and Nanak Singh (PW-14) clearly show that the accused was



last seen with their father Piara Singh (deceased) and there is no evidence which proves the involvement/presence of any third person. This fact clearly raises a strong presumption that the accused had murdered Piara Singh;

- ii) Statements of Harpal Singh PW-12 and Manu Singh PW-15 reveal another circumstance i.e. the accused was carrying Hathora in his hand and he was wearing blood stained clothes, which also raises a strong presumption of involvement of the accused in the murder of Piara Singh.
- iii) Ex.PW9/E i.e. disclosure statement of the accused under Section 27 of the Indian Evidence Act, 1872 also stands proved, as the discovery was made in the presence of independent witnesses.
- iv) The statement of Manjit Singh (PW-10) reveals another circumstance of extra-judicial confession, which also proved to be a substantive evidence against the accused.
- v) Statement of ASI Kashmir Singh (PW-9) corroborates the statement in the FIR, disclosure statement and recovery of hammer. He further stated that on 26.03.2000, he had arrested the accused who was produced by Manjit Singh (PW-10).



Meaning thereby the extra-judicial confession made by the accused to Manjit Singh (PW-10) is further corroborated by ASI Kashmir Singh (PW-9).

- vi) Though as per the contention of the learned counsel for the appellant that the extra-judicial confession was made to a person who was not known to the accused, cannot be accepted on the ground that there is one statement made by Manjit Singh (PW-10) before whom the extra-judicial confession is made that the accused requested him to produce him before the police and in the statement of ASI Kashmir Singh (PW-9) stated that he arrested the accused who was produced by Manjit Singh (PW-10). There is no cross-examination to this effect. Therefore, we cannot ignore even the extra-judicial confession made by the accused before Manjit Singh (PW-10). The circumstantial evidence and sequence of events proves the case of the prosecution.
- vii) As per inquest report, the recovery of blood stained wooden rod lying near the dead body is another evidence which shows that in all probabilities the act was done by the accused.
- viii) As per statement of Dr. Parmod Kumar (PW-1) who conducted the post-mortem, the cause of death was haemorrhage and shock as a result of injuries which are

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ante-mortem in nature and are sufficient to cause death in the ordinary course of nature.

23. All these circumstantial evidences form a complete chain as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Therefore, the prosecution has proved its case beyond any shadow of reasonable doubt.

24. Thus, the present appeal, being devoid of any merit, is dismissed and the judgment of conviction and order of sentence dated 08.05.2003 passed by the learned Trial Court are upheld.

25. Since, the present appellant who during the pendency of the appeal was on on bail, but absent himself from this Court, therefore, let a copy of this judgment be sent to the learned Chief Judicial Magistrate, concerned for compliance and issuance of necessary process for procuring the presence of the accused/appellant– Rajinder Kumar to serve the remaining part of sentence imposed upon him by the learned Trial Court.

26. Pending applications, if any, also stand disposed off.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 29, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No