

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-112-DB of 2003
DATE OF DECISION : February 05, 2015**

Neelam and another

...Appellants

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Dipender Singh, Advocate for the appellants.

Ms. Tanisha Peshawaria, DAG, Haryana
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Neelam and Shakuntla have challenged the conviction and sentence passed by the trial Court under Section 302 of the Indian Penal code as against them.
2. It is the case of the prosecution that accused Neelam fell

in love with deceased Sunil. He was advised not to marry Neelam as she hailed from the same village. Sunil was convinced with the above reason. The parents of Neelam and Shakuntla faced social boycott at the instance of the villagers. Neelam threatened deceased Sunil with dire consequences if he refused to marry her.

3. Ramroop who was the father of deceased Sunil set the law in motion by lodging the First Information Report. The dead body of Sunil was found in the village fields with many injuries caused by a sharp edged weapon. Alleging that an unknown person had killed his son with sharp edged weapon, he sought action by the police. He had not raised any suspicion on anyone. Unfortunately, Ram Sarup died during the course of trial. Therefore, he was not examined.

4. PW7 Dr. H.L. Benniwal conducted post mortem examination on the dead body of Sunil on 16.12.2000 at about 4.30 P.M. and found the following injuries on his dead body:-

1. Incised wound of 8 x 3 cm into brain deep over left mastoid region of head.
2. Three incised wounds of various sizes varying from 4 to 7 cms in length and bone deep over occipital region of head. Underlying skull bone was cut off upto brain matter.
3. Three transversely placed incised wounds of various sizes over left ear pinna.
4. An incised wound of 3 x 1.5 cms. into brain deep elliptical in shape and both ends were clean cut just above left eye brow.
5. An elliptical incised wound of 4 x 1.5 cms into brain

deep, both ends were clean cut over left temporal region.

6. Cut mark transversely placed by heavy sharp edged weapon on the anterior part of C2 C3 and C4 vertebrae (muscles, vessels and flesh were absent from neck).
7. Three incised wounds of 7 x 2, 6 x 2 and 4.5 x 2 cms and underlying scapular bone was cut off. It was present over upper and lateral part of left scapular region.
8. Three incised wounds of various sizes and bone deep on palmer aspect of right palm. Right thumb cut off by incised wound and all fingers of right hand cut off at level of proximal interphalangeal joint.
9. Multiple incised wounds of various sizes overlapping to each others on dorsal aspects of right hand, underlying bones also cut off.
10. Incised wound of 6 x 2 cms into bone deep, transversely placed over ulnar aspect of right forearm.
11. Six incised wounds of various sizes and bone deep over palmer aspect of left palm.
12. Two incised wounds of 4 x 2 x 2 cms and 3 x 2 cms into bone deep over right scapular region (all flesh, muscles and tendon were absent from right shoulder, right arm and both clavicular regions).
13. Two transverse cut marks of heavy sharp edged weapons present on posterior aspect of C4 and C3 vertebrae.

Cranial cavity was filled with clotted blood. Posterior hemisphere, left hemisphere, front left lobe of brain was

cut off.

5. In his opinion, deceased Sunil had died due to haemorrhage and shock on account of the injuries described by him. The injuries were found to be ante mortem in nature and sufficient to cause death in the ordinary course of life. Probable time that elapsed between injuries and death was instantaneous and between death and post mortem was within 36 hours.

6. PW5 Hardwari was the grand father of the deceased. The deceased had resided with him till his death for about nine years. He deposed that both the accused Neelam and Shakuntla came to her on 17.12.2000 at about 3.00 P.M. and suffered individually extra judicial confession to the effect that both of them murdered Sunil with an axe as the deceased refused to marry Neelam as promised. Thereafter PW5 was examined under Section 161 Cr.P.C. by the Investigating official.

7. PW6 Jagdish was the paternal uncle of the deceased. He lived at Jaitpur located about 35 Kms. away from the place of occurrence. He testified that in the evening of 15.12.2000, he spotted both the accused proceeding towards fields. He was also a witness to the recovery of the dresses and the weapon of offence from the house of both the accused.

8. PW8 Saroj was the widowed sister of the deceased. She was living with the family of the deceased. She deposed that there was a love affair between the deceased and accused Neelam. There

was a social boycott announced by the villagers against the parents of the accused. She also testified that accused Neelam wielded threat to the deceased in case he refused to marry her.

9. PW9 Sanjeev was the brother of the deceased. He spoke about the recovery of the dress materials and the weapon of offence allegedly recovered from the house of the respective accused.

10. PW10 Inspector Amar Singh was the Investigating Officer in this case. He spoke about the registration of the case based on the statement suffered by Ramroop, arrest of both the accused, disclosure statement suffered by them and the recovery of the material objects.

11. The FSL report would disclose that blood stains were found on the dresses and the weapons allegedly recovered at the instance of the respective accused.

12. The accused came out with their plea under Section 313 Cr.P.C. that they were innocent but they were falsely implicated.

13. DW1 Raj Kumar was examined on the side of the defence to speak to the fact that the police was at the spot on 16.12.2000 at 7.30 A.M. itself.

14. The trial Court having adverted to the above evidence on record, returned a verdict of conviction as stated supra.

15. We heard the elaborate submission made by the learned counsel appearing for the appellants as well as the learned DAG appearing for the State of Haryana.

16. The case is not based on eye witness account. The case of the prosecution hinges on circumstantial evidence. The Court will have to see whether the incriminating circumstances spoken to by the witnesses unerringly point to the guilt of the accused, ruling out their innocence in the crime of murder.

17. Let us first take up the last seen theory projected through PW6 Jagdish. As already pointed out by us, PW6 was none other than the real paternal uncle of the deceased. He hailed from a village Jaitpur located 35 Kms. away from the place of occurrence. Only a day prior to the occurrence, he happened to be in the occurrence village. In other words, he is found to be not only a witness related to the deceased but also a chance witness. Evidence of such a witness has to be carefully analysed before it is accepted.

18. He has deposed that both the girls proceeded towards the fields in the evening of 15.12.2000. There was no reason for him not to share such a vital information with his own brother Ramroop who set the law in motion on 16.12.2000, the moment he spotted his son murdered with lethal weapon. Very important aspect brought to the notice of this Court by the learned counsel appearing for the appellants is that there was no reference of the last seen theory projected by PW6 in Ex. DG, the police remand report submitted by PW10 Inspector Amar Singh. Had such a vital information been passed on by PW6 at least on 17.12.2000, there was no reason for PW10 to suppress such an information Ex. DG. Further, it is quite

common for the villagers to proceed towards the field in the evening hours. It is to be noted that both the ladies were not found with any weapon at the time when they proceeded to the field. Therefore, in our view, it is highly risky to rely upon the evidence of PW6 who spoke about the last seen theory.

19. Let us now take up the evidence of PW5 Hardwari who allegedly got the extra judicial confession suffered by both the accused. We find that he was the maternal grand father of the deceased. Deceased had been residing with him for about nine long years. He would have been under utter grief as he had lost the grand son who was living with him. On 17.12.2000, within one day after the dead body was recovered, the entire villagers would have been in grief. PW5 Hardwari would have been surrounded by kith and kin, close relatives while condoling the unfortunate death of a young boy. In other words, PW5 would not have been left alone for the accused to approach him in privacy to suffer extra judicial confession.

20. There was no reason for the accused to approach him as they had not intended to surrender before him. No sane person would have approached the grand father of the deceased and confessed the crime within two days of the occurrence. Even if the accused suffered extra judicial confession before PW5, PW5 would not have left both the accused to go scot free after confessing the crime before him. To top it all, it is found that in Ex. DG, the police remand report submitted by PW10, there was no reference as to the

extra judicial confession suffered by the accused before PW5. Therefore, it is highly doubtful that the accused individually suffered extra judicial confession before PW5. Such a piece of evidence cannot be the base for convicting the accused.

21. In the above context it is relevant to refer to a decision of the Hon'ble Supreme Court in ***Surinder Kumar versus State of Punjab 1999 (1) R.C.R. (Criminal) 164*** wherein it has been held as follows:-

“While on this point it is pertinent to mention that in the remand application that PW10 filed on July 10, 1992 after producing the accused before the Magistrate concerned he did not disclose that they had made a confession before PW6. From the impugned judgment we find that when this aspect of the matter was brought to the notice of the High Court by the appellant's counsel it observed that all details were not required to be given in that application. We are unable to share the above view of the High Court for if really such a confession was made before PW6 and told to PW10 it was expected that in praying for the remand of the accused, he (PW10) would refer the same, for that was the only material on which the prosecution could primarily rely in justification of such prayer. For the foregoing reasons we are unable to accept the claim of PW6 that the appellant and other accused made a confession of their guilt before him.”

22. In a similar circumstance, the Hon'ble Supreme Court in the above case refused to accept the case of the prosecution that accused suffered extra judicial confession before a witness, when

the same was not specifically referred to in the police remand report submitted by the Investigating Officer before the Court.

23. PW8 Saroj was the widowed sister of the deceased. She was residing in her parental house. She deposed that there was a love affair between the accused Neelam and deceased Sunil. There was a social boycott announced by the villagers against the parents of the deceased besides the threat wielded by Neelam against the accused.

24. Firstly we find that she was examined by the Investigating Officer only on 21.1.2001. No explanation was offered as to why she was not examined immediately after the occurrence. Further, if there had been any such threat from the accused, there was no reason for her not to share this vital information with her father who set the law in motion. Therefore, we have no hesitation to reject the evidence of PW8 Saroj.

25. Coming to the recovery of the material objects at the instance of the accused, we really entertain a doubt as to the recovery made by the Investigating Officer. We find that PW6 Jagdish was the uncle and PW9 Sanjeev was the real brother of the deceased. Both were interested in the outcome of the case. There was no evidence that both the accused proceeded to the scene of crime with an axe in their hand. There was no reason for them to bring the axe back to their house for preservation. When recovery is found to be doubtful, the blood stains found on the apparels and the

axe allegedly recovered at the instance of the accused cannot be made the basis for convicting the accused.

26. Of course, it is submitted by the learned Deputy Advocate General appearing for the State of Haryana that motive has been established, we find that a very weak motive has been projected by the prosecution. Even otherwise, it is a well settled proposition of law that establishment of motive alone cannot be a basis to convict the accused.

27. In the above facts and circumstances, the judgment of conviction and sentence passed by the trial Court stands set aside. Both the accused are acquitted of the charge of murder. They are on bail. Their bail and surety bonds shall stand cancelled. Consequently, the appeal is allowed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

February 05, 2015

p.singh