

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

CRA-S-713-SB of 2003

Date of Decision: May 13, 2015

Bhupinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.S. Siao, Advocate
and Mr. H.S. Sirohi, Advocate
for the appellant.

Mr. R.S. Randhawa, AAG, Punjab.

FATEH DEEP SINGH, J.

This is an appeal by the convict-Bhupinder Singh challenging the judgment and order of sentence dated 27.03.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Ferozepur holding the appellant guilty for commission of offence under Section 364 IPC and, thus, sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of ₹5000/- and in default thereof to further undergo rigorous imprisonment for nine months.

As has been brought to the notice of this Court by the appellant's counsel and by learned State counsel as well as on perusal of the records, FIR Ex.PA was recorded on the statement of Chuhar Mall PW1 alleging that on 20.11.1987 he and Nishan Singh went to Dhani of Massa Singh when around 11 a.m. accused appellant-Bhupinder Singh along with co-accused Gurinder Singh Bhullar and

Tarlochan Singh came in a Matador vehicle No.PJW-4585 driven by Gurinder Singh and it was in the presence of complainant the accused asked the deceased to settle a dispute over money amounting to ₹50,000/- which they had given to him for the purchase of narcotics and on this pretext took Massa Singh away who, thereafter, never returned and it is the apprehension of the complainant, Parkash Kaur, PW2 widow of Massa Singh that the accused had after abducting Massa Singh killed and threw his body. The prosecution examined complainant Chuhar Mall PW1, Parkash Kaur PW2, Inspector Kashmir Singh PW3, Gurdial Singh PW4 and Kanwaljit Singh PW5 and closed evidence. Though, the accused denied all these allegations in his stand taken under Section 313 Cr.P.C. but did not lead any evidence in his defence leading to the judgment of conviction.

From the evidence on the records it is in the presence of PW1 Chuhar Mall the accused had taken away Massa Singh in their vehicle and, thereafter, the deceased has not been heard by any one, thus, the element of last seen together comes into play. There is not an iota of evidence or explanation worth acceptance pointed out by the counsel for the appellant, how, the accused explain for this. It is through this evidence the prosecution has succeeded in establishing that the missing person was last seen in the company of the accused and who was never seen thereafter. It has been very well laid down so by the Hon'ble Apex Court in **2002 (4) (Criminal) S.C.752 in the case of Sahadevan @ Sagadevan vs. State represented by Inspector of Police Chennai** wherein reliance has been placed on earlier view of the Hon'ble Supreme Court in the case of **Joseph vs. State of Kerala (2000) 5 SCC 197**. Since it is obligatory for the accused to explain the circumstances in which the missing person and the accused party parted ways and, therefore, this studied silence on the part of the

defence which even to the very query of the Court learned counsel for the appellant could not explain certainly is a strong adverse circumstance that goes against the appellant. More so, in terms of Section 106, 105, 101 of the Evidence Act, it is for the accused to throw light on all crucial facts which ought to be especially within his knowledge and which could establish his innocence and the Court can find accused guilty after noting down his omissions adduce explanation or falsity of that explanation. Thus, the stand of the State and arguments submitted in consequence of it are a strong piece of evidence which undermines the arguments of the appellant's counsel. Learned counsel for the appellant has vehemently attacked the truthfulness of the prosecution's story by harbouring around the delay of almost one month and eleven days between the alleged occurrence and the registration of an FIR. By now it is well entrenched law that mere delay is not fatal for the prosecution reference of which can be taken note of the ratio laid down in **1994(1) RCR (Criminal) 371 SC** in the case of **State of Haryana vs. Manoj Kumar**. It is there in the testimony of material witness of the prosecution Chuhar Mall PW1 that they had been visiting the residence of the accused at Chandigarh and the accused had been putting them off on one pretext or the other and rather had set up a pretence that the deceased Massa Singh had gone across the border to bring money as he has promised to return it within two days. More so, being a case of disappearance has its own police methodology and mere because of its lethargy and reluctance to proceed ahead into the matter cannot be a ground to hold it disadvantageous to the case of the complainant. The testimony of the complainant is materially corroborated by the other witness PW2 Parkash Kaur, widow of the deceased and, thus, to the mind of this Court there has been sufficient explanation for this delay.

Though, much has sought to be argued on non-tracing of dead body of Massa Singh but elaborating the conduct in terms of Section 3 of the Evidence Act propounding the principle of **corpus delicti** it was held in **Mani Kumar Thapa vs. State of Sikkim 2002 (3) RCR Criminal 795** that what is required in law to base a conviction does not necessitates recovery of the dead body. The appellant has been convicted for commission of offence under Section 364 IPC and to prove an offence under these provisions of the Penal Code it must be proved that the person charged with the offence had the intention at the time of kidnapping that the person kidnapped/abducted will be murdered or so disposed off so as to put in danger or murder and, thus, highlights necessary ingredients of kidnapping and that of the person so kidnapped and for and in order to that he may be murdered or may be disposed off in such manner has to put in danger being murdered. It is well elicited in the evidence as has been sought to argue by the State that accused person had come in a vehicle and right in the presence of witnesses on the pretence of getting back their money had laid a trap and took a gullible deceased on this pretext and, thereafter, had been putting off the family by various reasons. The mere own admission by the accused before the witnesses are matters which certainly goes against the defence.

The premise of arguments raised by the learned counsel for the appellant that other witnesses have not been examined does not impresses the Court much as it is the quality of evidence that matters rather than its quantity. Learned trial Court had discussed in detail each and every aspect of the evidence of the prosecution and has come to a totally justifiable and legal conclusion that the charge under Section 364 IPC stood proved against the accused-appellant.

Thus, in the totality of what has been discussed,

nothing can be found fault with and in view thereof the impugned finding needs to be upheld. The appeal of the appellant, thus, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 13, 2015

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