

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Appeal-D No.216-DB of 2010

Date of Decision: August 28 , 2015.

Sodhi Lal @ Sarabjit

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Kamaljit Singh Dhillon, Advocate and
Mr. Vakeel Khosa, Advocate
for the appellant.

Mrs. Manjari Nehru Kaul, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred by appellant – Sodhi Lal @ Sarabjit impugning judgment and order dated 24.12.2009 whereby he has been convicted for the offence punishable under Section 302 IPC and sentenced to imprisonment for life, besides, fine of ₹10,000/- and in default thereof, rigorous imprisonment for one year.

FIR No.96 dated 15.05.2007, Ex.4PA/1 was registered on the statement, Ex.PA suffered by PW1 Amar Iqbal Singh He revealed that he had

taken five acres of land on lease from Iqbal Singh who is residing in Canada for the last 4-5 years. There is a submersible motor installed on the said land near which there is an old well. Complainant alongwith Jaspal Singh had gone to plough the said land on their tractor on 15.05.2007. While ploughing the land, they discovered dead body of a woman lying face downward in the old concrete well near the motor room in which round iron steps have been fitted for going down the well. Hair of the dead body was scattered and a brick was lying nearby. The deceased seemed to be a woman of about 28 years and 5'1" in height. It seemed that death had been caused due to strangulation or by inflicting a serious injury on the head. He then came to know that dead body in question was of a woman, namely, Rajni @ Rajji, resident of Galowali District Amritsar who had been living with Beeran Devi in the village for the last about 14-15 years. Beeran Devi had passed away a year ago. Deceased had illicit relations with appellant, Sodhi Lal @ Sarabjit. Jaswinder Kaur wife of Sodhi Lal @ Sarabjit often used to ask Rajni @ Rajji to desist. A day before the occurrence, the deceased and the appellant had been seen roaming together in the evening from Madara towards the school side. Complainant Amar Iqbal Singh expressed his belief that Rajni @ Rajji had been killed by appellant Sodhi Lal @ Sarabjit. While leaving Jaspal near the dead body, PW1 Amar Iqbal Singh proceeded towards the house of Mohan Lal, member Panchayat to whom the entire circumstances were revealed. Then both of them proceeded to the police station to inform the police. On the basis of the statement, Ex.PA of PW1 Amar Iqbal Singh, formal FIR, Ex.PA/1 was registered.

PW17 Inspector Jasbir Singh proceeded to the spot. Photographer

PW2 Mandeep Singh was called. He went down the well and found some hair enclosed in the right hand of the dead body. Said hair were removed and put in a plastic container and then into a cloth parcel, Ex.P16 which was sealed with his seal 'JS' and taken in possession vide recovery memo Ex.PC. Blood-stained earth, Ex.P17 and blood-stained brickbat, Ex.P18 were taken in possession vide memo Ex.PD. A pair of sandals, Ex.P19 was also taken in possession vide memo Ex.PE. Dead body was taken out of the well with the help of the residents of village. Inquest report, Ex.PR was prepared and dead body was sent for the post-mortem. Rough site plan, Ex.PS was prepared. Articles recovered were deposited by PW17 Inspector Jasbir Singh with PW14 MHC Dilbagh Singh.

As per post-mortem report Ex.PW7/A, a lacerated wound of 6cm x 5cm was found on the forehead of the deceased underlying bone fractured and the brain matters was coming out. In the opinion of the board of doctors, cause of death was shock and hemorrhage on account of the injuries mentioned above.

PW5 Sada Singh stated that on 17.05.2007 appellant suffered extra-judicial confession before him confessing to the crime committed by him. Statement, Ex.PG by Sada Singh son of Ram Singh was recorded. Appellant is disclosed to have contacted Sada Singh at about 8 O' clock on 16.05.2007 and confessed that the deceased and the appellant had been secretly meeting for the last 4-5 years as the appellant was married. Appellant and Rajni @ Rajji met on 14.05.2007 at about 9 O'clock at the motor of Amar Iqbal Singh. Deceased pressurized the appellant to marry her and asked to accompany her to Amritsar.

He refused to go and in a fit of anger, he strangled her. He also gave a brick blow on her head and threw her in the well. He fled from the spot due to fear. Appellant was arrested on 18.05.2007.

Appellant was produced before the Judicial Magistrate First Class, Jalandhar with a request to obtain the sample of hair of the accused. On orders of learned Judicial Magistrate First Class, accused was taken to Civil Hospital, Jalandhar. PW10 Dr. Davinder Singh extracted a sample of 15-20 hair from the scalp of the appellant, which were put into a container and sealed with the seal bearing impression 'DS'. Parcel containing hair, Ex.P15 was taken in possession by the police vide memo Ex.PJ. Disclosure statement, Ex.PP was suffered by the appellant-accused. On his pointing out, he got recovered his trousers, Ex.P36 and a shirt Ex.P37. A separate parcel, Ex.P21 of the same was prepared and taken in possession vide memo Ex.PQ.

Sample of the hair was sent for chemical examination through PW9 C.Mohan Singh. As per report, Ex.PX/2 of the Forensic Science Laboratory, the hair recovered from the hand/nails of the deceased and the sample hair taken from the scalp of appellant-accused were observed to show similar characteristics. As per report, Ex.PX/1 by the Forensic Science Laboratory, Chandigarh human blood was found on the blood stained earth and brick bat recovered from the spot as well as the trousers and shirt got recovered by the appellant.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Charge was framed against the accused on 19.11.2007 for offences punishable under Sections 302/201 IPC. Accused pleaded innocence

and claimed trial.

Prosecution examined as many as 17 witnesses to prove its case. Accused while denying the incriminating material put to him, pleaded innocence and false implication in his statement under Section 313 Cr.P.C. No evidence in defence was however led.

Learned trial court on examination of the evidence on record, facts and the circumstances concluded that the prosecution has proved its case beyond reasonable doubt in respect of the charge framed against the appellant-accused. Consequently, appellant was convicted and sentenced as detailed above. Aggrieved therefrom, present appeal has been preferred.

Learned counsel for the appellant vehemently argues that the prosecution case which rests entirely on circumstantial evidence is absolutely shaky and does not prove the commission of offence by the appellant. Chain of circumstances which may point to the guilt of the accused is conspicuous by its absence. It is vehemently urged while referring to the statement of PW16 Tejinderbir Singh, Judicial Magistrate First Class, Batala that the accused was never apprised of his right to refuse to give the sample of his hair. He was not provided with any legal aid at that time and neither was he warned that the result may be used against him. In this view of the matter, the entire trial is vitiated. Furthermore, reliance on the extra-judicial confession made by the appellant to Sada Singh is not justified as the medical evidence on record is not in consonance with the same. There is no mark of injury on the neck of the deceased whereas, accused is alleged to have first strangled the deceased. Furthermore, Sada Singh has not supported the prosecution version.

It is further argued that material witnesses in this case have turned hostile inasmuch as even the complainant has not supported the prosecution version. There was no motive whatsoever with the appellant to have murdered the deceased. Even if it is accepted for the sake of argument that there were illicit relations between the deceased and appellant, there was no motive or reason for the appellant to have done Rajni @ Rajji to death. It is also urged that there is grave discrepancy in the statements of various witnesses in regard to the recovery of hair from the person of the deceased. In any case, report of the FSL in regard to the hair recovered from the deceased and the sample of hair taken from the accused is not authoritative evidence to prove that the hair recovered from the deceased were, in fact, those of the appellant.

Learned counsel also submits that there was no matching of the blood groups neither was any DNA test conducted in respect to the hair or the blood found on the clothes allegedly recovered from the appellant. In view of the above, learned counsel prays that conviction of the appellant is not sustainable and deserves to be set aside.

Per contra, learned counsel for the State while refuting the said arguments submits that there is sufficient, cogent and overwhelming evidence on record to show the commission of the offence by the appellant. Some of the witnesses not supporting the prosecution case in toto does not detract from the veracity of the prosecution case in any manner especially in view of the attending circumstances and other evidence on record. She therefore, prays for upholding the impugned judgment and order.

We have heard learned counsel for the parties and gone through the

record.

Present is a case resting entirely on circumstantial evidence. Material witnesses except PW6 Manjit Kaur sister of the deceased, have chosen not to support the prosecution case. PW1 Amar Iqbal Singh, the first informant in this case, has been declared hostile but he has reiterated before the court his version of the events as they unfolded on 15.05.2007. He has proved the recovery of dead body of Rajni @ Rajji from the bottom of the well. He has however denied having any knowledge of illicit relation of the deceased with any person. He has admitted being joined in the inquest proceedings. Recoveries made at the spot are also admitted by him.

PW2 Jaspal Singh has also not supported the prosecution version though has admitted the recovery of dead body of Rajni @ Rajji on 15.05.2007.

PW5 Sada Singh i.e., the witness before whom the accused allegedly suffered an extra judicial confession has been declared hostile having chosen not to support the prosecution version.

PW13 Gurpratap Singh, a witness who had been introduced having seen the accused and deceased roaming together in the fields of Amar Iqbal Singh, has not supported the prosecution version.

PW6 Manjit Kaur, sister of deceased Rajni @ Rajji has however remained steadfast and consistent in her stand. She specifically deposed that the deceased was residing with one Beeran Devi for the last 6-7 years. Deceased had developed illicit relations with the appellant-accused despite him being married. She expressed a firm view that appellant-accused had done Rajni @ Rajji to death.

PW7 Dr. K.S.Bawa, Medical Officer, Civil Hospital, Jalandhar who conducted the post-mortem on dead body of Rajni @ Rajji alongwith two other doctors, revealed that a lacerated wound 6cm x 5cm on the forehead was detected with underlying bone fractured and brain matters coming out. Cause of death was shock and hemorrhage on account of the injuries as above. PW7 Dr. K.S.Bawa was not cross-examined despite an opportunity being given.

PW17 Inspector Jasbir Singh, the investigating officer in this case, has deposed that PW1 Amar Iqbal Singh accompanied by Mohan Lal, member Panchayt met him at Bus Stop of village Alwalpur and got his statement, Ex.PA recorded. He has also proved the recovery of dead body as well as recovery of hair in the closed right hand of the dead body. Recovered hair was put in a plastic container and converted into a cloth parcel. It was sealed and taken in possession vide recovery memo Ex.PC. PW17 Inspector Jasbir Singh further proved the recovery of blood-stained earth and other articles from the spot. He has deposed that PW5 Sada Singh revealed the suffering of extra-judicial confession by the appellant-accused whereupon he was arrested on 18.05.2007.

It is relevant to note that in view of PW5 Sada Singh not supporting the prosecution case, no reliance can be placed on extra-judicial confession allegedly made by the accused before him. However, evidence on record proves that the appellant had illicit relations with deceased Rajni @ Rajji. PW6 Manjit Kaur has specifically deposed to this effect. There is no evidence on record that she bore any ill-will towards the accused. No discernible reason has been set-forth for Manjit Kaur to falsely implicate the appellant.

Recovery of hair in right hand of the deceased is an extremely relevant and crucial piece of evidence in this case. Recovery of hair from the right hand of the deceased is duly proved on record not only by PW17 Inspector Jasbir Singh but also by PW15 SI Om Parkash. It is proved by PW17 Inspector Jasbir Singh that an application was moved before the Judicial Magistrate First Class with a request to obtain a sample of hair of the accused. This sample was deposited by PW17 Inspect Jasbir Singh with PW14 MHC Dilbagh Singh on the same day i.e., 15.05.2007. Said parcel was handed over by PW14 MHC Dilbagh Singh on 17.05.2007 to PW9 Constable Mohan Singh to be deposited with the Forensic Science Laboratory, Punjab, Chandigarh. Therefore, the argument that there is no evidence to show that it was the hair recovered from the dead body was sent for examination is not acceptable. It is pertinent to note that the appellant was arrested on 18.05.2007 at 3.30 p.m. Appellant had duly consented to the sample of his hair being taken on an application having been made by the prosecution.

Argument raised on behalf of the appellant that he was never apprised of the right to refuse the sample or that he did not have any access to legal aid therefore, the consent given by him is equally unacceptable. Such an argument is clearly fallacious and untenable. As per the FSL report, Ex.PX/2 hair recovered from the hand of dead body and the sample of appellant's hair showed similar characteristics. It has been urged that such a report cannot be relied upon to convict the appellant. Learned counsel for the appellant relies on a Division Bench Judgment of Delhi High Court in Shahbuddin v. State (NCT of Delhi), 2002(1) CCR 396 to say that such an analysis is not a sure shot test

for arriving at a conclusion that the hair belongs to one and the same person.

However, the Hon'ble Supreme Court in Kanbi Karsan Jadav v. State of Gujarat, 1966 AIR (SC) 821 while considering the similar argument observed as under:-

“..... It was argued that the finding of the hairs was of no consequence and at least the Chemical Examiner was not the proper expert who could depose as to the similarity or otherwise of the hairs. The writers on medical jurisprudence, however, have stated that from the microscopic examination of the hairs it is possible to say whether they are of the same or of different colours or sizes and from the examination it may help in deciding where the hairs come from. In 733 Taylor's Medical Jurisprudence (1956 Edn.) Vol. 1, at page 122, some cases are given showing that hairs were identified as belonging to particular persons.”

In the present case, the abovesaid report is one of the circumstances which proves the complicity of the appellant in the commission of the offence. It is a material but not the sole ground for convicting the accused.

Apart from the factum of recovery of the hair from the hand of the deceased, which was found to have similar characteristics as that of appellant's hair, blood-stained clothes of the appellant were recovered vide memo Ex.PQ pursuant to his disclosure, Ex.PP. Contention of learned counsel for the appellant is that in the absence of blood groups not having been matched or DNA not conducted, said report Ex.PX/1 cannot be relied upon to convict the appellant.

We do not find any merit in this argument. Recovery of blood-

stained clothes at the behest of the appellant is duly proved on record. In view of Section 106 of the Evidence Act, it was incumbent upon the appellant to have explained the circumstances. No benefit can accrue to the defence on account of three of the witnesses turning hostile. There is no reason whatsoever for PW6 Manjit Kaur, sister of the deceased to falsely implicate the present appellant. Furthermore, there is no escape from the fact that circumstances do not lie.

Argument that there is no mark on the neck of the deceased, therefore, prosecution case falls to the ground in the facts and circumstances of the case is unacceptable. Similarly, absence of motive in any case is not relevant once the attending circumstances point to the guilt of the accused.

Chain of circumstances in this case is complete. Evidence on record points to the unequivocal hypothesis of guilt of the appellant and permit of no other conclusion. It is apparent that the prosecution has indeed succeeded in proving its case against the appellant beyond reasonable doubt.

Learned counsel for the appellant is unable to point out any ground to warrant interference in the conviction and sentence imposed upon the appellant. Consequently this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

August 28 , 2015.
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