

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

Crl. Appeal-D No. 715-DB of 2010(O&M)

Date of Decision: March 4, 2015.

Kuldeep Singh

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

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

Present: Mr. J.S.Lalli, Advocate
for the appellant.

Mr. Vivek Saini, AAG, Haryana.

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.

Appellant – Kuldeep Singh has preferred this appeal challenging judgment of conviction dated 26.04.2010 and order of sentence dated 28.04.2010 passed by the learned Additional Sessions Judge, Panipat whereby he has been convicted and sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC, besides, pay a fine of ₹5,000/- and in default thereof, to undergo further rigorous imprisonment for ten months.

Brief facts of the case are that, FIR No.116 dated 23.03.2008, under Section 304 IPC, Police Station Chandni Bagh, Panipat was registered on the basis of statement (Ex.PC) of Sabira son of Bundu. Complainant – Sabira stated that appellant – Kuldeep Singh, who was on visiting terms with his family, had come to their residence on 21.03.2008 at 7.00 p.m. He had taken the complainant's son, Monu @ Islam on the complainant's motorcycle. Appellant - Kuldeep Singh returned alone alongwith the motorcycle at 11.00 p.m. On enquiry about his son Monu @ Islam, Kuldeep said that he would return in the morning. Complainant and his family members searched for Monu but he could not be traced. On 22.03.2008, appellant – Kuldeep himself brought the deadbody of Monu at about 7.00 a.m. in a bullock cart (Jhota Buggi) at his residence and stated that Monu was found dead in the drain (Nala). Kuldeep Singh (appellant) on 23.03.2008 came to the complainant and confessed before him, his wife Kalsum and his son Gulab to having murdered Monu by strangulating him with a rope and throwing the body in the drain. On his statement, FIR (Ex.PM) was registered. Appellant – Kuldeep Singh was arrested on 24.03.2008.

Appellant – Kuldeep suffered a disclosure statement (Ex.PH) on 24.03.2008 to the effect that he had good relations with Monu's family and was on visiting terms with them. On 21.03.2008, he and Monu had come near the drain and while conversing with each other, deceased Monu had mentioned that his sister Parveen was having illicit relations with the appellant – Kuldeep. On this appellant – Kuldeep became annoyed and strangulated Monu due to which he died. He threw his dead body in the drain of dirty water. He narrated this to

Sabira, father of the deceased, his mother – Kalsum and brother – Gulab. Pursuant to the said disclosure statement, he demarcated the place of occurrence vide memo Ex.PJ and on his pointing out, a rope with which he strangled Monu, was recovered from the bushes near the place of occurrence vide memo Ex.PK.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented under Section 304 IPC. Charge was framed against the appellant on 11.07.2008 under Section 302 IPC for having caused the death of Monu @ Islam.

Appellant pleaded innocence and claimed trial.

Prosecution examined as many as 12 witnesses to substantiate its case. Statement of the appellant was recorded under Section 313 Cr.P.C. wherein he claimed innocence and false implication in this case. Three witnesses were examined in defence.

Learned trial court on considering all the fact and circumstances of the case, convicted and sentenced the appellant to undergo rigorous imprisonment for life besides fine of ₹5,000/- for the offence punishable under Section 302 IPC.

Learned counsel for the appellant vehemently argues that the prosecution has failed to prove its case beyond reasonable doubt. Prosecution case is based entirely on circumstantial evidence which is conspicuous by its absence.

Delay in lodging the FIR is submitted to be indicative of false implication of the appellant. Deceased went missing on 21.03.2008 and the

FIR was registered on 23.03.2008. Therefore, the FIR is the result of due deliberation and is a concocted version.

It is submitted that it is only the statement of the complainant , Sabira on the basis of which conviction has been rendered. There is no evidence on record which connects the appellant to the murder of Monu @ Islam.

Prosecution has attempted to connect the appellant to the offence on the basis of his disclosure statement, Ex.PH. It is argued that said disclosure is not admissible in evidence and cannot be relied upon as a circumstance to link the appellant with the crime. Similarly, recovery of the rope with which the appellant allegedly strangled the deceased is extremely suspect. There is no independent witness to the alleged recovery of the rope. It is further submitted that FSL report (Ex.PS) reveals that no skin or hair was detected on the rope which was allegedly recovered on the disclosure statement of the appellant. Cause of death as per the medical evidence is asphyxia due to strangulation. Therefore, in the absence of any hair or skin being detected on the rope, appellant cannot be connected with the offence, if any. Furthermore, the ligature mark reveals that a knot was not tied along the neck of the deceased. Therefore, it would be improbable for the appellant to have strangled the deceased in the manner suggested. It is also argued that the rope was never presented before the doctor while seeking his opinion on 03.05.2008.

Learned counsel for the State, however, controverts the averments made on behalf of the appellant and submits that the guilt of appellant has been proved beyond reasonable doubt on the basis of clear and cogent evidence on

record.

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

Appellant has been convicted on the basis of circumstantial evidence. There is admittedly no eye-witness account of the offence in question. From the evidence on record, the chain of events pointing to the guilt of the appellant is complete. Unimpeachable evidence has been led by the prosecution which proves the guilt of the appellant beyond a shadow of doubt.

With regard to the delay in lodging of the FIR, it is not fatal in the peculiar facts of the present case. It has come on record that the appellant was known to the family of the deceased, Monu @ Islam. He was on visiting terms with the family of the deceased. He left with the deceased from his residence on the complainant's motorcycle. There was no occasion for the complainant or his family to have suspected foul play at the hands of appellant – Kuldeep. Appellant himself came to Sabira i.e., the father of deceased and confessed his guilt even prior to lodging of first information with police. Dead body of Monu @ Islam was brought by him and handed over to the complainant at his residence. It is only thereafter that light was shed on the incident. Complainant immediately took steps for reporting the matter to the police. In this view of the matter, it cannot be said that there is unexplained delay in the lodging of FIR.

It is proved on record that deceased -Monu @ Islam was last seen with the appellant. There is clear and cogent evidence in the shape of testimonies of PW4 Sabira, father of the deceased, PW5 Kalsum, mother of the deceased. They have stated in unequivocal terms that the appellant and the

deceased left their residence on the fateful day at about 7.00 p.m. on the complainant's motorcycle. Appellant returned alone alongwith the motorcycle at 11.00 p.m. and informed them that their son, Monu @ Islam would return in the morning. Dead body of Monu @ Islam was brought by the appellant on his bullock cart on next day i.e. 22.03.2008. Post-mortem examination was conducted on 22.03.2008 which establishes that the deceased passed away on the intervening night of 21/22.03.2008. Testimony of the complainant and his wife inspire confidence and there is no reason to cast a suspicion thereon. They withstood lengthy cross-examination and stuck to their version.

Argument of learned counsel for the appellant that there was no occasion for the appellant to have made an extra-judicial confession before the parents of the deceased, is untenable. It is an admitted case that the appellant was on visiting terms with the family of the complainant. He himself had brought the dead body of Monu @ Islam to their residence on 22.03.2008. Therefore, it is not unbelievable that being unable to bear the burden of the crime, he confessed before them on 22.03.2008 in respect to his crime. Furthermore, it is not the extra-judicial confession in isolation which is relied upon for conviction of the appellant. Evidence on record corroborates the factum of guilt of the appellant. Link in the chain of circumstances pointing to the guilt of the appellant is complete.

Disclosure statement (Ex.PH) can be relied upon as one of the circumstance pointing to the culpability of the appellant. Rope with which he strangulated Monu @ Islam has been duly recovered from a place which was in his exclusive knowledge. Traces of blood were found on this rope as per the

FSL report (Ex.PG). Averment that the recovery of rope was suspect as no independent witness has been joined, is fallacious inasmuch as there is no mala fide alleged against the official respondents. They have no axe to grind against the appellant. Non-joining of independent witness in such a situation is not fatal to the prosecution case.

PW11 Dr. Sanjeev Gupta has specifically deposed that presence of hair or skin on the rope is not necessary as the rope was not present over the ligature mark on the dead body. Therefore, argument regarding absence of hair and skin on the rope is of no avail to the appellant.

Attempt of the appellant to prove his alibi is woefully unsuccessful. Statements of defence witnesses do not inspire much confidence. It is a well known fact that no child would be playing Holi in the streets at 10.30 p.m. as has been averred by the said witnesses specifically DW1 Mahabir Singh. The false implication is not proved on record either from cross examination of the prosecution witnesses or from the defence evidence.

Alternate plea by the learned counsel for the appellant that he be convicted for the lessor offence punishable under Section 304 IPC is noticed only to be rejected. Though an attempt has been made to suggest to the witnesses Sabira and Kalsum that their daughter had illicit relations with the appellant but it is relevant to note that the appellant's case is of complete denial. In his statement under Section 313 Cr.P.C. he pleads innocence and false implication. He does not plead sudden and grave provocation at the hands of the deceased which lead to his killing. Therefore, there can be no question of convicting the appellant for the offence punishable under Section 304 IPC

instead of 302 IPC.

The prosecution has successfully proved its case on the basis of unimpeachable evidence. Link in the chain of circumstances is complete. They rule out any other hypothesis except guilt of the appellant. In the facts and circumstances of the case, the appellant has been rightly convicted and sentenced for the commission of offence punishable under Section 302 IPC. There is no infirmity or irregularity in the impugned judgment and order dated 26/28.04.2010 passed by learned Additional Sessions Judge, Panipat.

In view of the above, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 4, 2015.
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