

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-947-DB-2010 (O&M)

Date of decision: 02.11.2015

Kulbir Kaur @ Rani

..... Appellant

Vs.

The State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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

Argued by: Mr. Dhirinder Chopra, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General
Punjab.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 30.08.2010 rendered by learned Sessions Judge, Kapurthala, whereby the appellants-accused Kulbir Kaur @ Rani and Paramjit Singh @ Bhamba were convicted for the offence under Section 302 of Indian Penal Code (for short 'IPC'). Vide order of sentence of even date, each one of them was sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹10,000/- with default clause.

Briefly, prosecution case is like this; that Harbans Singh s/o Harbhajan Singh, set the police machinery into motion by making statement Ex. PW13/A to the effect that he has constructed a place for *Baba Peer Bhikam Dass* and used to light *Chirag* there on every Thursday. On 17.09.2009, he alongwith his brother Joginder Singh and other member had gone to that place at about 4:00 P.M. to light the *Chirag*. After doing the needful, they came back. On 18.09.2009, i.e. the day on which the complaint was lodged by him with the police, at about 11:00 A.M, he along with his brother Jagtar Singh, had gone to paddy fields. When they reached near the place of *Baba Bhikam Dass*, they saw that one pair of *chappal plastic* lying there. They also saw one dead body of Hindu Gentleman wearing '*phatui*' (*vest*) and some blood was also seen over there. The body was that of unknown person. As per complainant, he left his brother Jagtar Singh, near the dead body and he himself had gone to the police station for lodging the report. On this report, endorsement Ex.PW14/A was made, whereupon, formal FIR Ex.PW14/B was recorded. Thereafter, Inspector Piara Singh along with complainant Harbans Singh had gone to the place of occurrence. On reaching there, they found that the blood had come from the head of the body and besides that some vomiting type material was also lying over there. Blood as well as vomiting were taken into separate plastic container sealed with the seal of 'PS' and then the same were taken into possession vide memo Ex.PW13/B. Complainant Harbans Singh and SI Surinder Singh signed this memo as witnesses. A brick bat stained with

blood and some hairs attached to that were also found at the spot. Hairs from the brick bat were removed and put the same in polythene envelop. Brick-bat and the envelop were sealed with the seal of 'PS' separately and then taken into police possession vide memo Ex.PW13/C. The body was found lying upside down on the floor of *Smadh of Baba Kithan Dass*, situated in the area of village Machhi Joa. Plastic *chappal*, colour black, found lying outside the *Smadh* were converted into a parcel sealed with the seal of 'PS' and the same were taken into police possession. At a small distance from the *Smadh*, in the paddy fields an underwear of orange colour was lying. It was also converted into a parcel and took into possession. Inquest proceedings Ex.PW14/C were completed. Photographs of the dead body were obtained. Rough site plan of the spot was prepared as Ex.PW14/D. Post mortem of the dead body was conducted as unidentified person at Civil Hospital, Sultanpur Lodhi on 21.09.2009 and, thereafter, the dead body was handed over to Municipal Committee, Sultanpur, Lodhi for cremation vide receipt Ex.PW14/E. After post mortem, HC Darshan Singh handed over the sealed parcel of clothes of deceased containing one '*phatui*' and one pant of black colour having strips and the same was taken into police possession vide memo Ex.PW14/F.

On 07.10.2009, Kabal Singh and one Parvinder Singh came to police station, Sultanpur, Lodhi, where Piara Singh, Inspector, showed the photographs and clothes of deceased to them and they identified the same as that of Dharminder Singh s/o Kabal Singh.

Identification memo Ex.PE was prepared. Kabal Singh, Parwinder Singh and SI Surinder Singh signed this memo as witnesses. After making inquiry, Inspector Piara Singh, search for the accused Paramjit Singh and Kulbir Kaur. Residence of both the aforesaid accused were raided and they could not be arrested as they were evading their arrest.

On 09.10.2009, statement of PW Sewa Singh was recorded who had last seen the accused in the company of deceased at Gurudwara Ber Sahib, where Sewa Singh had gone on 18.09.2009 for paying his obeisance. On 10.10.2009, Investigating Officer, recorded the statement of Sarpanch Jagga Ram before whom accused made extra judicial confession regarding present crime. On 11.10.2009, while the Investigating Officer along with police officials was going from police station Sultanpur, Lodhi to Dudwindi, Kabal Singh met them on bus-stand, Sultanpur, Lodhi, who also joined with the police party. When the police party reached near Chak Kotla, a person alongwith one lady was seen coming from the side of Chak Kotla, Kabal Singh identified both of them as Paramjit Singh and Kulbir Kaur. As such, they were arrested. On the search of Paramjit Singh, an identity card of Election Commission of India, belonging to Dharminder Singh deceased was recovered from the left rear pocket of his pant which was taken into police possession vide memo Ex.PF. Identity Card is Ex.P5. Motorcycle of deceased was also taken into possession vide memo Ex.PG. Photographs were also taken into possession vide memo Ex.PK. When the dead body was sent for post-mortem, a request was

made to doctor for removal of the finger tips (potas) for the purpose of comparison by the Finger Print Bureau. The same were removed and sent to Finger Print Bureau, Phillaur, in intact condition. The finger prints matched with that of Dharminder Singh. The report of Forensic Science Laboratory are Ex.PW14/H and Ex.PW14/J. After completion of necessary investigations, the challan was put in the Court.

Finding a *prima-facie* case against the accused for committing offence punishable under Section 302 IPC, accused were charge-sheeted accordingly. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation appearing against them and pleaded their innocence.

The defence taken by the accused is this; that they have been involved in this case on the basis of suspicion.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court convicted both the appellants-accused for committing offence punishable under Section 302 IPC vide judgment dated 30.08.2010 and also sentenced them vide order of sentence of even date, as mentioned in the earlier part of this judgment.

It may be appropriate to mention at the very outset that before hearing this appeal, since Paramjit Singh @ Bhamba, s/o Joginder Singh, has been reported to have died, therefore, the appeal against him was recorded as abated. Now, we are left with only Kulbir

Kaur @ Rani, w/o Dharminder Singh.

We have heard learned counsel for the parties, besides appraising the entire material and evidence coming on record.

This case is based on the circumstantial evidence. There is no direct evidence regarding causing death of Dharminder Singh by any of the accused. Before holding the accused guilty on the basis of circumstantial evidence, the prosecution has to comply with the parameters set out for basing the conviction on circumstantial evidence as mentioned in Arvind @ Pappu Vs. State (Delhi Administration), 1999 (2) R.C.R. (Criminal), 810:-

- (i) Circumstances relied upon in support of conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused.*
- (ii) The circumstances from which conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused.*
- (iii) All the circumstances cumulatively taken together should lead to only irresistible conclusion that accused alone is the perpetrator of the crime.*

Kabal Singh (PW7) is the father of Dharminder Singh (deceased). He deposed that Dharminder Singh was married to Kulbir Kaur @ Rani appellant-accused about 5 years ago from the date of his death. The relationship between his son and his wife were not cordial.

Accused Paramjit Singh used to visit his house to meet his daughter-in-law. Kulbir Kaur and Paramjit Singh were having illicit relations.

As per learned State counsel, in order to remove the hurdles in their relation, the life of Dharminder Singh was taken away by these two accused. Kabal Singh put forward the story that one day before '*Masya*' of village Dalla where the festival was going on, his son had gone over there but he did not return. They searched for him but could not locate. After that he had gone to the police station Sultanpur, Lodhi and met Piara Singh and told about the whole story of his son to him, whereupon, he showed some photographs of unknown persons and only then he identified the photographs Ex. P2 to Ex.P4 as the one belonging to his son Dharminder Singh and then identification memo of the dead body of Dharminder Singh was prepared as Ex.PE.

In fact, the dead body of Dharminder Singh was spotted by Harbans Singh (PW13), who deposed that he had constructed the place of *Baba Peer Bhikam Dass*. He used to light *Chirag* on every Thursday at that place. On 17.09.2009, he alongwith his brother Jagtar Singh had gone to that place at about 4:00 P.M. After lighting *Chirag* there, they came back. On the next day i.e. at about 11:00 A.M., he alongwith his brother Jagtar Singh had gone to the fields. When they reached near the place of *Baba Bhikam Dass*, they saw one pair of '*chapal*' plastic lying there and also saw one dead body of an unknown person and some blood over there. After leaving his brother near the dead body, Harbans Singh reported the matter to the police whereupon his statement Ex.

PW13/A was recorded. As the dead body was that of an unknown person, therefore, the same was kept for about 72 hours and, thereafter, the post-mortem was got conducted. Photographs of the dead body were also kept and after completion of necessary requirements for the disposal of the dead body of an unknown person, it was handed over to Municipal Committee, Sultanpur, Lodhi for cremation vide receipt Ex.PW14/E and thus the dead body of Dharminder Singh was disposed of.

From the above-discussed evidence on the file, it is not there that the deceased was last seen in the company of accused. On this point, there is statement of Sewa Singh (PW6). He deposed that on 17.09.2009, he was working at Chalianwala Chowk, Sultanpur, Lodhi. On the next day (i.e. 18.09.2009), he had gone to Gurudwara Ber Sahib for obeisance. When he came out of the Gurudwara after paying obeisance, he saw both the accused i.e. Paramjit Singh and Kulbir Kaur and her husband Dharminder Singh. They were on motorcycle, make Hero Honda. After that he had gone to his village. Thus, this witness had seen the deceased in the company of accused only on 18.09.2009. He did not give the time as to when the deceased was seen in the company of accused by him. As per Harbans Singh (PW13), he spotted the dead body which was later on identified by Kabal Singh (PW7) as that of Dharminder Singh, on 18.09.2009 at 11:00 A.M.

The house of Sewa Singh is adjoining the house of Kabal Singh PW. Sewa Singh (PW6) deposes that he told Kabal Singh that he

had seen his son with the said persons. Again, he did not state as to on which day he had told Kabal Singh about it. He further stated that he had gone to the police station to inform this fact that Dharminder Singh was not available or that he was seen by him. On the next day, he went to the police station to inform this fact. His statement was recorded by the police. However, on inspection of the police record, no such statement was found on the file. Thus, if we go by the statement of Sewa Singh, it would mean that on 19.09.2009, he had reported the matter to the police. It is highly unbelievable that Sewa Singh would himself alone go to the police for giving information regarding non-availability of Dharminder Singh and would not inform about it to Kabal Singh whose house is adjoining to his house. Kabal Singh was not knowing about the fact that Sewa Singh had seen the deceased in the company of accused on 18.09.2009. Even on the date i.e. 07.10.2009, when he had gone to the police for giving information regarding missing of his son Dharminder Singh, thus the statement of Sewa Singh that he had told Kabal Singh that he had seen his son with the accused, stands belied. Rather from the circumstances available on the file, it is evident that Sewa Singh being immediate neighbour of Kabal Singh has deposed in his favour. When as per Sewa Singh, the statement was recorded by the police which was not found on the record, the statement of Sewa Singh does not inspire confidence in the mind of the Court regarding genuineness of prosecution version in this regard and the statement of Sewa Singh is not free from doubt.

Another circumstance available against the accused is that of extra judicial confession which as per prosecution case accused made before Jagga Ram s/o Khaira Ram (PW10). Jagga Ram, is the Sarpanch of the village. As per this witness, both the accused came to him and confessed before him that they have killed Dharminder Singh and kept the dead body near the tom of Peer, in Tehsil, Sultanpur Lodhi. Accused Rani further told him that she was having illicit relations with accused Paramjit Singh and her husband had come to know about this fact, as a result of which, he often used to beat her. She instructed him to produce both of them to the police. He told them to come at about 8:00 A.M. on the following day. Thereafter, they never came to him. Thus, this witness did not produce the accused before the police. In fact, this witness is related to Kabal Singh. Kabal Singh, is the son of Labhu. Labhu is the brother of Jagga Ram (PW10). As such, Jagga Ram (PW10) is closely related to Kabal Singh. When this witness states that he did not disclose the factum of extra judicial confession of the accused to anybody not even to Kabal Singh that the accused had come to him, except to the police; the statement of this witness becomes unbelievable. It is natural conduct of a close relation to first disclose the fact regarding the incident in question to the person concerned particularly father of the deceased. Further the statement of Jagga Ram (PW10) that Kabal Singh has disclosed the fact to him that his son was not traceable, only after the accused have made extra judicial confession, is again unbelievable. As per (PW10), extra

judicial confession was allegedly made by the accused before Jagga Ram on 09.10.2009 whereas from the statement of Kabal Singh (PW7) and that of Inspector Piara Singh (PW14), it is evident that on 17.10.2009, Kabal Singh when reported the matter regarding missing of his son to police, the police showed him the photographs of an unknown person and then he identified the photographs Ex.P2 to Ex.P4 as that of his Dharminder Singh. Thus, when Kabal Singh had also come to know about the death of his son on 07.10.2009, there was no point for him to state before Jagga Ram (PW10) that his son was untraceable after 09.10.2009.

Kabal Singh is the real nephew of Jagga Ram. It is again highly improbable that accused would go to the near relation of Kabal Singh and confess their guilt before him. On the other hand, Jagga Ram being closely related to Kabal Singh, is said to be interested witness in seeing the accused punished since they were having illicit relations.

Above all, Jagga Ram (PW10) deposed during his cross-examination that both the accused have jointly come to him and made a joint statement. It is the settled proposition of law that no reliance could be placed on the joint confession of the accused. In *Niranjan Lal Vs. State of Haryana, 1994 (2) RCR (Crl.)620 and Hari Kant Vs. State of Haryana, 1999 (2) RCR (Crl.)91*, there were three accused persons making joint confession before a person with whom they had no intimacy. Under those circumstances, it was held that no reliance could be placed on the joint confession made by the three accused as it

was not disclosed as to who out of three accused persons disclosed the facts because all the accused could not state the same words.

In the case in hand as well Jagga Ram (PW10) deposed that Paramjit Singh was not having relations with him. Under those circumstances, it cannot be said as to what confession was made by each accused actually. Even the confessional statement made by the accused has nowhere been recorded. It is also the settled proposition of law that extra judicial confession even if believed is a very weak piece of evidence and ordinarily not accepted without independent corroboration. *In Balbir Singh Vs. State of Punjab, 1999 (4) RCR (Crl.) 51*, the extra judicial confession made before Sarpanch was not believed. In *State of Punjab Vs. Gurdeep Singh, 1999 (4) RCR (Crl.) 75*, it was held that confession made after 20 days of incident, where the delay is not explained, confession cannot be believed.

In the case in hand as well, there is no corroborative evidence available on the file. Even as per Jagga Ram (PW10), the accused made confessional statement before him after about 20 days of the incident. There is also no explanation coming forth as to what accused had been doing during the aforesaid period and further as to why they came to Jagga Ram (PW10) on 09.10.2009 for making confession. If they had come to him, it is again not known as to why they did not turn up the next day. Kulbir Kaur is the wife of deceased. As, as per Kabal Singh, she was having illicit relations with Paramjit Singh accused, therefore, the police raided the residences of both the

aforesaid accused but they could not be arrested as they were evading their arrest. Thus, after 07.10.2009, when Kabal Singh disclosed that matter to the police, police started searching for the accused and started conducting raid on their residences in order to arrest them. Only, thereafter, i.e. on 09.10.2009 police recorded the statement of Sewa Singh an immediate neighbour of Kabal Singh as last seen witness and further recorded the statement of Sarpanch Jagga Ram (PW10) on 10.10.2009, a witness of extra judicial confession and then arrested the accused on 11.10.2009.

We have already discussed above that neither the statement of Sewa Singh (PW6) nor the statement of Jagga Ram (PW10) inspire confidence in the mind of the Court regarding guilt of the accused and in fact the same are not believable nor free from doubt. Thereafter, it appears that only in order to make a case against accused, the statement of Sewa Singh and Jagga Ram were recorded by the police.

The next circumstance that after arrest of Paramjit Singh accused, on search of his person, an identity card of Election Commission of India belonging to Dharminder Singh (deceased) was recovered from the left back side pocket of his pant Ex.P5, is highly unbelievable. No accused would carry an identity card of Election Commission of India belonging to deceased Dharminder Singh in the pocket of his pant and roam about. There is also no point for the accused to take the aforesaid Identity Card (ExP5) into his possession as it was not in any way beneficial for Paramjit Singh. Paramjit Singh

had died. No recovery of any article belonging to deceased was got effected by Kulbir Kaur @ Rani so as to connect her with this crime. Even, otherwise the condition of the body in which it was found lying at the spot also creates doubt regarding involvement of accused in this crime. The dead body was wearing only vest. The pant of the dead was found lying near the dead body at the *Smadh of Baba Kithan Dass*. Had the accused killed Dharminder Singh, there would have been no point for them to undress Dharminder Singh. Thus, all these circumstances available on the file create doubt regarding genuineness of the prosecution case. As such, the circumstances relied upon by the prosecution cannot be said to be fully established and complete so as to convict the accused.

For the reasons recorded above, finding merit in this appeal. The judgment of conviction date 30.08.2010 and order of sentence of even date recorded against appellant-accused Kulbir Kaur @ Rani wife of Dharminder Singh is set aside and she is ordered to be acquitted. She be released at once, if not wanted in any other case.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

02.11.2015
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