

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No.D-1043-DB of 2014

DATE OF DECISION: July 14, 2015

Kapil @ Kallu

....Appellant

versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Vinod Ghai, Senior Advocate with
Mr.Paras Talwar, Advocate for the appellant.

RAMENDRA JAIN,J.

The present appeal has been filed by the complainant assailing the judgment dated 6.6.2014 passed by the Additional Sessions Judge (Exclusive Court), Jhajjar acquitting respondent Nos.2 to 6 of the charges under Section 302 read with section 34 IPC. The relevant facts are as under:

On receipt of a telephonic message around 4.15 p.m. on 16.11.2010 from Beer Singh, Sarpanch about lying of dead body of Vikram @ Toni, resident of Luhari in the Jhera of tubewell situated near the temple, ASI Briham Pal along with EASI Vikram Singh and Constable Surender reached at the spot and found present complainant Kapil @ Kalu son of Dharambir, resident of Luhari. Kapil @ Kalu got recorded his statement Ex.PC to ASI Briham Pal that they were two brothers and one sister. His brother Vikram Singh, younger to him, was married. They both the brothers were living together. At around 9.00 p.m. yesterday i.e. on 15.11.2010, his brother Vikram Singh had met

Satender at bus stand of their village. Satender asked his brother Vikram Singh as to where he was going, whereupon, Virkam Singh told him that he was called by Krishan son of Atraj and Naresh son of Vikram, so he was going to them on their tubewell near the temple. In turn, Satender had disclosed this fact to the complainant on that very night. Thereafter, his brother Vikram Singh did not return home. On 16.11.2010, when while searching him, he reached to his fields, his cousin Dinesh told him about lying of a dead body in the cavity of the tube-well. Complainant and his cousin Dinesh went on the tube-well and found the dead body of his brother Virkam Singh lying there. His deceased brother Vikram Singh was in the company of Krishan, Naresh, Mukesh, Krishan and Jogender, residents of village Luhari, District Jhajjar on the previous night. The above assailants in connivance with each other after murdering his brother, had thrown his dead body in the cavity of well in order to destroy the evidence. Legal action may kindly be taken against them.

Since the offence was found to have been committed under Section 302 IPC, therefore, ASI Birham Singh made his endorsement Ex.PW13/A on the said statement of complainant Kapil @ Kalu and sent the same through Constable Surender to the Police Station for the registration of the case. Formal FIR Ex.PB was registered by ASI Jora Singh under sections 302, 201 read with section 34 IPC and he too made endorsement Ex.PB/1 in this respect. The police swung into action. The inquest proceedings were conducted vide inquest report Ex.PW13/B. The dead body was sent for post mortem examination

along with application Ex.PW13/E. The statements of the relevant witnesses were recorded. Two empty bottles of liquor having marka Jagadhari No.1 and Kinnu were recovered from the spot and were taken into possession vide recovery memo Ex.PW13/C. Rough site plant of place of occurrence Ex.PW13/D was prepared. The dead body was got photographed vide photographs mark 1 to 7. The accused were arrested. On completion of investigation, final report under Sections 302,201,304,34 IPC was presented against all the respondents-accused Nos.2 to 6 before the Area Magistrate.

Since the offence was exclusively triable by the Court of Sessions, therefore, learned Chief Judicial Magistrate, Jhajjar committed the case to the Court of Sessions vide order dated 8.2.2011.

The learned trial Court after hearing the learned PP for the State and learned counsel for the accused, on finding a prima-facie case, framed charge under Section 302 read with 34 IPC against the accused to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as thirteen witnesses, namely, PW1 Halqua Patwari Jai Parkash, PW2 ASI Jora Singh, PW3 complainant Kapil @ Kalu, PW4 Satender, PW5 Dr. Sher Singh, PW6 Head Constable Krishan Kumar, PW7 Dinesh, PW8 Mukesh, PW9 EASI Ishwar Singh, PW10 Sub Inspector Braham Parkash, PW11 Sub Inspector Satpal, PW12 Constable Anil Kumar and PW13 ASI Birham Pal. Besides, the prosecution also relied upon various documents prepared during investigation.

After closure of prosecution evidence, the statements of the accused-respondent Nos.2 to 6 were recorded putting entire incriminating evidence came on record against them to which they denied and pleaded their false implication. However, no evidence was led by the accused in defence.

After hearing learned Public Prosecutor for the State and learned counsel for the accused, the learned trial Court acquitted all the respondent-accused Nos.2 to 6 of the charges framed against them.

Learned counsel for the appellant has argued that the findings recorded by the learned trial Court are erroneous as there is specific evidence on the record to show that the deceased Vikram Singh was in the company of the accused on the night of occurrence i.e. on 15.11.2010, therefore, the accused were to prove that under what circumstances he died. The trial Court was not justified in acquitting the accused-respondent Nos.2 to 6, particularly, when they admitted their guilt before the Investigating Officer regarding the commission of crime. Thus, on the evidence before the Court, the respondent Nos.2 to 6 are liable to be convicted for the said offences.

We have given our thoughtful consideration to the arguments advanced by learned senior counsel for the appellant.

The entire case of the prosecution rests on circumstantial evidence. There is no eye witness account.

PW4 Satender, who toed the lines of prosecution version has been disbelieved by the trial Court on the ground that this witness did not go to see the dead body of Vikram Singh, although he was the

person who had allegedly apprised the complainant that the deceased Vikram Singh had met him in the previous night i.e. on 15.11.2010 and had told him that he was called by Krishan and Naresh. Though the witness belongs to the same village, his not going to see the dead body of Vikram Singh, creates doubt about veracity of his testimony.

Undisputedly, respondents Naresh and Krishan were co-villagers of the complainant Kapil @ Kallu. His non-contacting them to know the whereabouts of his deceased brother, despite having knowledge through PW4 Satinder Singh that his deceased brother had gone to them creates suspicion about his conduct that the things did not happen in the manner as narrated by the prosecution.

The trial Court has rightly held that the statement of PW3 complainant Kapil about last seen of his deceased brother in the company of the respondents Naresh and Krishan cannot be taken into consideration being hearsay as he himself had not seen his deceased brother in the company. Rather, this fact according to him, was told by PW4 Satinder to him.

The only prosecution witness of last seen is PW4 Satinder. However, his testimony too is of no avail, because as per his deposition, in the night of 15.11.2010 deceased Vikram had met him and on his asking from him as to where he was going, deceased Vikram told him that he has been called by Naresh and Krishan, so he was going to them. From his above deposition, it is evident on the record that PW3 Satinder had also not lastly seen the deceased Vikram in the

company of respondents and Krishan, rather this fact according to him was told to him by deceased Vikram.

In view of above factual position, the fact remains that none had lastly seen the deceased Vikram in the company of respondents Naresh and Krishan from the night of 15.11.2010, till his dead body was found on 16.11.2010. Hence, the prosecution has miserably failed to connect the respondents-accused from any angle with commission of crime.

Further more, the Investigating Agency did not find any incriminating material at the scene of crime, which could connect the accused with the crime. Mere disclosure statements of the accused are of no avail to convict the accused, being not legally admissible in evidence, as no recovery in pursuant thereto was effected from them.

Suresh, who had allegedly produced Jogender, Krishan and Mukesh, as deposed by PW6 Head Constable Krishan Kumar and PW11 Sub Inspector Satpal, has not been examined by the prosecution for the best reasons known to it, despite the fact that he was the material witness, because the entire case is based on circumstantial evidence. His testimony would have certainly thrown some light about the confession of the accused before him and to corroborate the prosecution version.

As per deposition of PW11 Investigating Officer Satpal, he did not even join any independent witness, at any stage of investigation, which casts serious doubt upon the prosecution story, because had he been done so or examined him as a prosecution

witness, in that eventuality, he could make clear about the alleged extra judicial confession of the accused before him, strengthening the case of prosecution.

According to PW8 Mukesh he could not hear any types of conversation between the accused while going to the temple of the village, as they on seeing him stopped their conversation. Thereafter, he returned. Therefore, his deposition is of no help to the prosecution.

There are material discrepancies in the prosecution version about the arrest of the accused either on 16.11.2010 or 19.11.2010 which creates doubt. PW3 Kapil @ Kalla and PW4 Satender have deposed that three accused, namely, Jogender, Krishan and Mukesh were arrested by the police on the same day i.e. 16.11.2010 and the remaining two within two hours of their making statements to the police. Contrary to it, PW6 Head Constable Krishan Kumar and PW11 SI Satpal Singh, Investigating Officer, have deposed that the aforesaid accused were arrested on 19.11.2010. They categorically denied the suggestion that the accused were already in their custody since 16.11.2010.

More so, PW8 Mukesh has deposed that the accused Jogender was called by the police and on an inquiry from him, he confessed his guilt along with other four accused on 16.11.2010 on the spot itself. According to the prosecution, Krishan, Mukesh and Jogender were apprehended then and there and were taken into police station. Contrary to it, as per deposition of PW11 Satpal, they were arrested on 19.11.2010.

There is another glaring feature in the instant case, which completely falsifies the prosecution story. As per statement of Suresh recorded under Section 161 CrPC Ex.D1, he had disclosed the names of only two accused, namely, Krishan and Naresh to whom accused Vikram Singh, on inquiry had told that he was going to them, but in the complaint Ex.PC which set criminal law into motion, the complainant has named four accused, namely, Krishan, Naresh, Joginder and Mukesh. However, it is unexplained on the file that from where he came to know about the remaining two accused, namely, Jogender and Mukesh. How their names surfaced during investigation is a mystery. As discussed above, there is not an iota of evidence on the record that the accused and the deceased were seen by anyone in the company of each other prior to the incident.

We have gone through the impugned judgment and found no illegality or perversity in the same.

No other point was urged before us.

In view of the aforesaid discussion, we find no merit in the present appeal and the same is accordingly dismissed.

(RAMENDRA JAIN)
JUDGE

July 14, 2015
Kd

(S.S.SARON)
JUDGE