

Above-noted appeals are being taken up together for hearing as they arise out of a common judgment of conviction dated 08.07.2013 and order of sentence dated 10.07.2013 passed by learned Sessions Judge, Gurdaspur. Both the appellants have been convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life, besides, pay a fine of ₹10,000/- each and in default thereof, to further undergo rigorous imprisonment for one year.

Prosecution, in this case, was set in motion on the statement, Ex.PA of complainant Raju Masih (PW1). As per Ex.PA dated 07.06.2011 at about 4.40 p.m. complainant Raju Masih disclosed that he had three sons. Appellants-accused, Gobinda son of Joginder Pal and Rockey Masih son of Balwinder Masih came to his house on 05.06.2011 at about 4.00 p.m. and took his eldest son Sunny Masih (deceased) on the pretext of taking a bath in canal. His son did not return home till 7.30 p.m. when appellant Gobinda's mother and sister came to their house and informed that his son Sunny Masih had drowned in the canal. Appellant Gobinda and his uncle Mohinder son of Murid (elder brother of appellant Gobinda's father) came to their house at about 11.00 p.m. and handed over the clothes of his son. They searched for his son. His dead-body was recovered from near the bridge of drain (Nakashu) in the area of village Chandu Suja on 07.06.2011. Complainant averred that his son, Sunny Masih was beaten by appellants-accused, Gobinda and Rockey and then killed him by drowning in the Nakashu. Motive behind the murder is that a month prior to the occurrence, his son had a quarrel with the appellants Gobinda and Rockey Masih and due to this reason, they killed his son. He prayed for legal

action to be taken against the accused.

On the basis of this statement, FIR No.44 dated 07.06.2011, Ex.PA/2, was registered. Inquest report, Ex.PC was prepared. Dead-body was sent for conducting post-mortem examination. Inspector Inderjit Singh, PW6, conducted the investigation. Site plan, Ex.PE was prepared. Clothes of the deceased produced before him were taken in possession vide memo Ex.PF. Post-mortem report, Ex.PB was received. As per post-mortem report, cause of death was asphyxia due to obstruction of airway passages by inhalation of water due to drowning, which is sufficient to cause death in the ordinary course of nature. Following injury was found on the person of deceased:-

“A big swelling on the right side of temporal parietal region measuring 5x5 cm. On dissection right temporal parietal bone was fractured and fractured bony part embedded in the brain matter after tearing meninges. Blood was present in the underlying fractured bone in the brain matter.”

Appellants were arrested on 26.06.2011. A motorcycle produced by appellant Rockey Masih's brother was taken in possession on 24.06.2011 vide memo Ex.PH. Site plan of the place where deceased Sunny Masih was stated to be murdered as identified by the accused was prepared as Ex.PJ.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Charge was framed against the accused on 13.09.2011 to which they pleaded innocence and claimed trial.

Prosecution examined as many as seven (7) witnesses to prove its case.

While denying the incriminating material put to them, the accused

in their statements under Section 313 Cr.P.C. pleaded innocence and false implication. Appellant Gobinda specifically pleaded that deceased Sunny Masih was his friend. They had decided to go to the canal for bathing on 05.06.2011 at about 4.00 p.m. The canal was two kilometers away from their village. They started taking bath in the canal but unfortunately Sunny Masih was lost in the canal. They tried to trace out the body but were unsuccessful. Information of this tragedy was conveyed to the parents of Sunny Masih. His clothes were delivered to them. He had no quarrel with the deceased and he felt sorry for having lost his friend. Appellant Rockey Masih has specifically pleaded that he has no concern with the drowning of Sunny Masih in the canal and he has been falsely implicated in this case. One witness DW1 Surjit Singh was examined in defence.

Learned trial court on appreciation of evidence on record concluded that the prosecution has succeeded in proving its case against the appellants consequently, convicting them for offence punishable under Section 302 read with Section 34 IPC and sentenced them as above. Aggrieved therefrom, the present appeals have been preferred by both the appellants.

Learned counsel for the appellants vehemently argues that there is, in fact, no evidence on record which would connect the appellants with the death of Sunny Masih. Appellants were friends and it is an admitted position that they used to play together. They were all young students. It was an unfortunate accident in which Sunny Masih had passed away. There is no evidence on record to show that the appellants had caused the death of Sunny Masih.

It is further contended that there is a delay in lodging the FIR which shows due deliberations and embellishment. Incident is of 05.06.2011 whereas, FIR was registered on 07.06.2011 falsely implicating the appellants even though admittedly information was duly conveyed to the family of the deceased immediately. Alleged motive is not substantiated from the evidence on record. Complainant never even raised such an apprehension on 05.06.2011. Dead-body was recovered after about two days i.e., on 07.06.2011. Furthermore, in case there was any truth in the prosecution version, there is no question of the appellants and their parents having gone to the house of complainant and informing them about the tragedy and handing over clothes of the deceased to them. In the light of facts and circumstances, deceased having been last seen in the company of appellants cannot be taken to be clinching evidence to show their culpability in the commission of offence. Hence, it is prayed that both the appellants be acquitted of the charges against them and the impugned judgment and order be set aside.

Learned counsel for the State while refuting the abovesaid averments submits that cogent and clear evidence has been led by the prosecution which proves the culpability of the appellants of the offence as charged. She submits that there is no denial of the fact that the deceased was last seen in the company of the appellants. Furthermore, if there was any truth in the version of the deceased having gone to the canal for taking a bath, there was no occasion for him to be wearing a vest and underwear as is revealed by the evidence on record. It is, thus, prayed that the conviction and the sentence imposed upon the appellants be upheld.

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

record with their able assistance.

A perusal of the statement, Ex.PA, of complainant Raju Masih reveals that deceased Sunny Masih and the appellants used to often play together. He had no suspicion whatsoever against appellants-accused when they had left his residence alongwith the deceased. PW1, Raju Masih has further admitted in his testimony before court that his son knew little bit of swimming though he never used to go to the canal for the same. However, admittedly complainant never stopped or restrained his son from going to the canal. In the same breath, it has been admitted that people often take bath in the canal during summer. In respect to the quarrel between the deceased and the appellants a month prior to the incident, complainant Raju Masih has admitted that he never lodged a protest in this respect. He neither informed Sarpanch of the village or even the parents of the accused regarding the alleged quarrel. It is further admitted that subsequent to the alleged quarrel his son continued playing in the village grounds alongwith the appellants. On the day of incident also he never restrained his son from accompanying the appellants. Complainant has further admitted that a day prior to the unfortunate incident, there was a storm and trees had fallen in the canal.

Similarly, PW2 Mangal Masih uncle of the deceased (younger brother of complainant Raju Masih) has not denied that the deceased freely accompanied the appellants and was never restrained from accompanying the appellants by his father.

It is, thus, apparent that the alleged motive sought to be projected by the prosecution falls to the ground. There is no evidence, whatsoever, on record to suggest that any quarrel had taken place between the deceased and the

appellants. PW6 Inspector Inderjit Singh has deposed that no proof regarding the said quarrel was produced before him either.

Furthermore, even if it is accepted that any such quarrel had taken place between the deceased and the appellants, it is clear from the evidence on record that the same was forgotten and all of them were playing together. The deceased was never stopped by his parents from accompanying the appellants. In case there was any serious dispute between appellants and the deceased, it is not possible that the parents would not have raised any objection to the deceased accompanying the appellants for going to the canal for taking a bath or that the deceased would have been permitted to freely associate/play with the appellants. PW1 Raju Masih and PW2 Mangal Masih have specifically stated that the appellants had come to their house and taken Sunny Masih alongwith them on the pretext of taking a bath in the canal. In this view of the matter, factum of the deceased having been last seen in the company of appellants pales into insignificance and that by itself cannot be an indication that the deceased was murdered by the appellants.

Furthermore, medical evidence on record does not fortify the prosecution version. As per Dr. Kuldip Singh, PW3, post-mortem was conducted by him on the dead-body of Sunny Masih on 08.06.2011. Injury as detailed in the foregoing para was found. However, cause of death was asphyxia due to obstruction of airway passages by inhalation of water due to drowning, which is sufficient to cause death in the ordinary course of nature. It is admitted by complainant Raju Masih, PW1 that there was storm a day prior to the unfortunate incident and trees had fallen in the canal. Probability that the injury may have been suffered by striking against a tree or any other object

cannot be ruled out.

Facts as narrated by the complainant himself specifically in respect to appellant Gobinda and his uncle giving the information about the tragedy as well as handing over the clothes i.e., pant and shirt of the deceased to them, does not indicate the complicity of the appellants in this case. Contention of the learned counsel for the State that PW4 Mukhtiar Masih deposed that father of appellant Rockey Masih had come to him and revealed that the children had committed a mistake and requested him to help being a member of the Panchayat, can be of no avail. It is not a case of extra-judicial confession having been made before PW4 Mukhtiar Masih. Furthermore, he has admitted that he did not reveal such disclosure by the appellant's father to anyone except the complainant. This was never revealed by him to the police at any stage. Therefore, much credence cannot be given to such a testimony.

Similarly, the recovery of dead-body from the silt ejector does not indicate the murder of deceased by the appellants. Though the complainant has stated that the canal water was got stopped, PW6 Inspector Inderjit Singh has categorically stated that the canal was never closed on account of this incident and the flow continued. Dead-body was recovered on 07.06.2011 i.e., two days after the incident. No intimation was lodged before 07.06.2011 though it is an admitted position that information and intimation regarding the unfortunate incident was conveyed to the parents of the deceased on 05.06.2011 itself. Clearly the evidence does not unflinchingly point to the sole hypothesis of the guilt of the appellants. It is a settled position of law that conviction cannot be based on suspicion however strong it may be. Suspicion, conjectures and surmises can never be the foundation of a conviction. Evidence has to cogently

and succinctly point to the definite culpability of the accused.

Keeping in view the entirety of facts and circumstances, we feel that the prosecution has failed to prove its case beyond reasonable doubt qua the appellants. It cannot be said that the evidence on record, facts and circumstances of the case point to no other hypothesis except the guilt of the appellants. In such a situation, appellants are indeed entitled to the benefit of doubt.

Consequently, impugned judgment of conviction dated 08.07.2013 and order of sentence dated 10.07.2013 passed by the learned Sessions Judge, Gurdaspur are set aside. Appellants are acquitted of the charges against them.

Accordingly, both the appeals stand allowed. Appellants be released forthwith if not required in any other case.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 27 , 2015.
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