

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-1275-DB of 2014 (O&M)

Date of decision : 12.03.2015

Rajender Singh @ RajuAppellant

Versus

Jai Parkash and othersRespondents

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

Present: Mr. N.S. Shekhawat, Advocate
for the appellant.

LISA GILL, J.

Appellant – Rajender Singh @ Raju is aggrieved of acquittal of respondents No. 1 to 3 vide judgment dated 29.05.2014 passed by learned Additional Sessions Judge, Narnaul. Hence, the present appeal.

Brief facts of the case are that one Mahiraj lodged DDR No. 7 dated 18.03.2008 at Police Station Mahendergarh to the effect that they are four brothers, two of whom i.e. Piru and Raghbir are unmarried. His brother Raghbir was found dead in the morning of 18.03.2008. Post mortem was conducted to find out the cause of death. Proceedings under Section 174 Cr.P.C. were initiated. As per Post Mortem Report (Ex. PW8/A), cause of death was asphyxia due to strangulation. Strangulation was ante mortem in nature.

Thereafter statement of appellant – Rajender Singh was recorded to

the effect that deceased Raghbir Singh was his maternal grand mother's brother. They were all together in the evening on 17.03.2008. Meals were taken at night. Raghbir was left at his house and Rajender returned to his residence. At about midnight, Rajender came out of his house to urinate, dogs were barking near Raghbir's house. When he reached there, he saw two persons running in the street but he went back to his house and fell asleep. Next morning, he was busy looking after his animals. At about 7.30 a.m. he sent his son Surender for milking Raghbir's buffaloes. Surender informed that the main gate was bolted from inside and Raghbir had not woken up. He went to Raghbir's house to inquire. On finding the door bolted from inside he called a number of times but on receiving no response he jumped the gate and went inside. Raghbir Singh was found lying dead. He returned to his residence and informed his daughter and wife. They went to the Sarpanch to inform. He had a suspicion that Pawan and Munim have killed Raghbir Singh.

On the basis of this complaint, FIR No. 97 dated 18.03.2008 was registered under Sections 302/34 IPC. Accused Jai Parkash, Munim, Shakuntla and Mithlesh were arrested. Pawan was found innocent during investigation. Challan/report under Section 173 Cr.P.C. was presented. All the four accused were discharged by the trial Court on 31.07.2008. Said order of discharge was set aside by this Court in CRR No. 3075 of 2009 on 16.01.2014. Accordingly, the accused were proceeded against. One of the accused Munim died in the interregnum and proceedings were dropped qua him.

Nine witnesses were examined by the prosecution to

prove its case. Statement of the accused was recorded under Section 313 Cr.P.C. wherein they pleaded false implication. All pleaded that they have been falsely implicated by Rajender Singh to grab the property of Raghbir Singh.

Learned trial Court while concluding that the prosecution has been unable to prove the case against the accused beyond reasonable doubt acquitted all of them of the charges against them.

Learned counsel for the appellant vehemently contends that there is overwhelming evidence on record to connect the accused with commission of offence. *Chunni* with which Raghbir was strangled has been recovered at the instance of accused Jai Parkash. Raghbir has infact been done to death by respondents No. 1 to 3. Respondent No. 1 – Jai Parkash is a family friend and respondents No. 2 and 3 are close relatives. As Raghbir was single, they have killed him in order to grab his property. Furthermore any shortcoming on the part of the investigating agency cannot be a ground for any benefit to the accused, in view of sufficient and cogent evidence to connect them with the crime.

On hearing learned counsel for the appellant and carefully going through the file, we feel no case is made for interference by this Court.

Present is a case of circumstantial evidence. Link in the chain of circumstances has to be complete so as to point out only to the guilt of the accused persons and permit no other hypothesis. Prosecution has miserably failed to establish the complete chain of circumstances to link the accused with crime. It is noticed that at the

first instance, when the appellant recorded his statement (EX. PW5/C) he did not raise any suspicion against any person except one Pawan and Munim. However, while recording his statement before the trial Court, he stated that he saw Pawan and Munim running away in the street. In case, he had indeed seen the said persons running at the said point of time, he would necessarily have incorporated it in his statement made on 18.03.2008. Conduct of the appellant Rajender is itself suspect inasmuch as he came back to his residence and fell asleep. He never made any effort to inquire about the well being of Raghbir at that point of time even though he had allegedly gone there. He made no attempt to apprehend two persons allegedly fleeing from there. He did not alert anyone less either. Appellant's conduct is unnatural and improbable raising a doubt on the veracity of the version put forth by him.

Accused Pawan was found to be innocent during investigation. Application under Section 319 Cr.P.C. for summoning him as an additional accused was dismissed and there was no challenge to the same. Accused respondent – Jai Parkash is sought to be inculpated on the basis of recovery of *chunni* from his house pursuant to a disclosure statement rendered by him. However, the said recovery in itself is not sufficient to connect Jai Parkash with commission of offence as there is no evidence to show that Raghbir was done to death with this *chunni*. No fibre or thread was found on or near the ligature mark on the dead body neither this *chunni* was sent to the FSL Madhuban for verifying the presence of hair or pieces of skin of the deceased on the *chunni*.

Reference by learned counsel to cross examination of PW8 Dr. Ranveer Singh to the extent that he has opined that strangulation with the recovered *chunni* cannot be ruled out, is not sufficient to connect the accused with the offence. It has not been proved as to whom this *chunni* belonged to. As per the disclosure statement of Jai Parkash (Ex. PW5/H), all the accused were present at the house of Munim where they had conspired to kill Raghbir. Said *chunni* was brought from the house of Munim. It is recovered from the house of Jai Parkash where admittedly ladies reside. Said *chunni* is a regular item of clothing used by them. There is no independent witness to prove the recovery of said *chunni*.

Disclosure statements allegedly made by the accused in police custody cannot be relied on in the facts and circumstances of the case. This statement has not led to the recovery of any fact thereby inviting the application of Section 27 of the Evidence Act.

Furthermore, it is admitted that appellant filed a civil suit (Ex. DE) claiming right to the property of the deceased Raghbir alleging himself to be an adopted son of the deceased. This suit was filed on 16.04.2008 i.e. after the death of Raghbir on the intervening night of 17/18.03.2008. All the circumstances in their entirety raise a doubt on the prosecution version.

Prosecution has indeed failed to establish the chain of events with all the links intact which point solely to the guilt of the accused persons. Suspicion, however, strong can never take the place of proof. It is for the prosecution to prove its case beyond reasonable doubt.

Learned counsel for the appellant is unable to point out any ground, which would persuade us to interfere in the well reasoned judgment of acquittal. It is settled position of law that a judgment of acquittal is not to be set aside lightly. There are no strong, compelling or substantial reasons and neither is there any perversity or illegality in the impugned judgment. Mere possibility of another view is not a ground to warrant interference.

Consequently, this appeal is dismissed and impugned judgment dated 29.05.2014 passed by learned Additional Sessions Judge, Narnaul is upheld.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 12, 2015
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