

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No. 154-DB of 2015 (O&M)

Date of decision : August 28, 2015

Kesar Singh

.....Appellant

Versus

State of Punjab and others

....Respondents

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

Present: Mr. Rajbir Singh, Advocate
for the appellant.

LISA GILL, J.

Instant appeal has been preferred by Kesar Singh son of Mohinder Singh – complainant in FIR No. 206 dated 05.11.2012 and the father of the deceased Harpreet Singh. Challenge is to judgment dated 18.11.2014 passed by the learned Additional Sessions Judge, SAS Nagar, Mohali whereby respondent Sukhwinder Singh @ Sundi has been acquitted of the charge for the offence punishable under Section 302 IPC.

Brief facts of this case are that information was received regarding dead body of an unidentified person being detected around Bansa Wali Chungi, Kharar. PW8 Pritpal Singh reported when he

went towards Ajj Srover situated near his house on 04.06.2008 that he detected a foul smell in the area. First he thought that some dead animal was lying there but then realised that it was a human body. He could not identify the dead body. Pritpal Singh informed Man Singh, Municipal Councillor of his Ward, who telephonically informed the City Police Station on which the police reached the spot. Dead body was taken from the spot to the Civil Hospital, Kharar. His statement Ex. PW1/A was recorded.

On the same day at about 6.30 p.m. Kesar Singh son of Mohinder Singh identified the dead body to be that of his son Harpreet Singh and his statement Ex. PW1/E was recorded. He revealed that he was a Clerk with the District Treasury Office, Rupnagar. He has two daughters who were elder to the deceased and were married. He had two sons, the younger being Harpreet Singh(deceased). His daughter Bholi was married at village Lutheri. His son had a relationship with a girl of village Lutheri and he used to say that he would get married at village Lutheri. Complainant would counsel him that he has given his daughter in the said village, therefore, it is not appropriate to marry a girl from the said village. His son Harpreet Singh left for village Lutheri to go to his sister's in-laws house on 01.06.2008 at about 12.00 noon because his daughter Bholi had been blessed with a boy and she was with him at her parental home. Harpreet Singh had gone to get clothes etc. of his sister but he did not return till 04.06.2008. They had thought he might have stayed back at village Lutheri for some reason. PCR party of

the police came to their house and informed that a boy has met with death at Sar Srover. A photocopy of the complainant's identity card was recovered from the pocket of the deceased's shirt. On this the complainant went to the Civil Hospital where he identified the dead body of his son. He expressed a desire to know the reason for his son's death, therefore, asked for a post mortem to be conducted to remove his doubt as to the cause of Harpreet's death. He submitted that he would give his statement for any further proceedings only after receipt of the Post Mortem Report. Said statement was duly signed by the complainant and attested by Sant Singh.

Inquest report Ex. PW1/4 was prepared. An entry in the daily diary register was made Ex. PW1/J. Post mortem was conducted and the body handed over to the family. Post Mortem Report Ex. PW4/D was received wherein it was observed that the cause of death would be given after the Chemical Examiner's report. No external injury was seen on the body. On dissection of the body, left 4th, 5th and 6th ribs were found fractured with corresponding laceration of left lung and heamothorax. On dissection of abdomen spleen was found ruptured with massive heam qperitoneum. In the column against information furnished by the police in the Post Mortem Report Ex. PW4/8, the doctor's note reads as under,

“ As per police papers, patient was missing since 01.06.2008. He was having an affair with some girl at her sister's in-laws village and the relatives are suspicious. He had gone to that village for some family reason on 01.06.2008 and was missing since then and his dead body was found in a pond.”

PW4 Dr. Manju Bansal, Medical Officer, Civil Hospital, Kharar has proved that on receipt of Chemical Examiner's report Ex. PW4/F wherein Chlorocompound group of insecticides was detected. Board of doctors opined the cause of death to be shock and haemorrhage subsequent to multiple injuries to the lungs and spleen in the presence of Chlorocompound group of insecticides which were antemortem in nature and sufficient to cause death in the ordinary course of nature.

Complainant submitted an application Ex. PW7/A to the Director General of Police, Punjab on 24.06.2008 for action being taken against the murderers of his son. It was stated in this application that his son received about 5-6 calls from telephone number 9914225124 at home on 02.06.2008. On this, his son left home and did not return till the evening. Complainant searched for his son for days but found no clue. Dead body of his son was recovered from a pond on 04.06.2008 near Basan Wali Chungi. He averred that as per Post Mortem Report his son has been murdered by strangulating him and breaking his ribs and brutally beating him. Complainant had been continuously asking the police at police chowk, Kharar but they would not listen to him and he suspects that the police is involved with the murderers. Therefore, he prayed for action to be taken against the murderers of his son.

Yet again application dated 05.07.2008 Ex. PW3/A was submitted by the complainant to Senior Superintendent of Police, Mohali. While reiterating the version in his earlier application dated

23.06.2008 he expressed suspicion against the present appellant alongwith Kaka son of Amrik Singh and Raju son of Mamu. All three were stated to be good friends of the deceased. When the police questioned them they revealed that Harpreet Singh kept roaming around with them till 12 noon. They indulged in imbibing intoxicants and smack and thereafter Harpreet Singh proceeded to meet the girl Charanjit Kaur alias Channi of village Lutheri for getting his mobile back. Complainant's wife thereafter revealed to him that their son Harpreet Singh had relations with a girl named Charanjit Kaur alias Channi of village Lutheri who had visited their house number of times as well. His elder daughter was also married at village Lutheri. His wife also revealed that the appellant alongwith Kaka and Harpreet used to meet the said girl twice a week. Therefore, after grave consideration of the matter it has come to the light that his son has been murdered by respondent Sundi, Kaka and the girl Channi by entering into a deep rooted conspiracy. Even after revealing all these facts, police is not taking any action whatsoever. He was allegedly being made to run from pillar to post. No FIR was being registered despite specific allegations. Ultimately on the direction of Senior Superintendent of Police, SAS Nagar Mohali present FIR dated 05.11.2012 was registered under Section 302 IPC against the respondent. Mandeep Singh @ Kaka in the meantime had passed away.

On completion of investigation, report under Section 173 Cr.P.C. was presented against the appellant. Prosecution examined

18 witnesses to prove its case against the accused. Accused while denying incriminating evidence put to him pleaded false implication and innocence in his statement under Section 313 Cr.P.C.

Learned trial Court on consideration of the entire facts and circumstances concluded that the prosecution had failed to prove its case against the accused beyond reasonable doubt thereby acquitting the respondent of the charge framed against him. Aggrieved therefrom present appeal has been preferred.

Learned counsel for the appellant vehemently argues that despite clear and cogent evidence on record to show the complicity of the accused – respondent, learned trial Court has wrongly acquitted him. Said judgment is absolutely perverse and displays a gross error on the face of it as cogent evidence on record has been ignored. Complainant Kesar Singh PW3 as well as wife Paramjit Kaur PW6 have proved that their son was last seen with the respondent. Appellant has been unable to explain the circumstances in which Harpreet Singh was found dead as he was the person last seen with the deceased. It is further submitted that medical evidence on record proves homicidal death of Harpreet Singh. It is, thus, prayed that acquittal of respondent – Sukhwinder Singh be set aside and he be convicted for the offence punishable under Section 302 IPC and be sentenced accordingly.

We have heard learned counsel for the appellant and gone through the record which had been requisitioned.

Prosecution case rests entirely upon circumstantial evidence, therefore, it is incumbent upon the prosecution to establish

that the link in the chain of circumstances is complete and that the evidence on record does not permit of any other hypothesis but the guilt of the accused. Much stress has been laid on the deceased being last seen in the company of the accused to prove his complicity. Reference was made to the testimony of Paramjit Kaur PW6. Paramjit Kaur PW6 in her statement reveals that during summer days on the first date of the month probably in the year 2008 her son Harpreet Singh went to meet his sister at village Lutheri and he returned back home that evening. He received some calls on his mobile phone in the morning of the second date of the same month of 2008. Thereafter, respondent – Sukhwinder Singh and Kaka visited their house. They sat for about 15 minutes. Thereafter her son after taking a bath met them and her son received 5th telephone call on his mobile after which he left the house alongwith Sukhwinder Singh and Kaka. Her son thereafter did not return back. She expressed an apprehension that their son might have been killed by the respondent and Kaka and thrown in the pond situated near octroi post. PW6 does not give any specific time or date on the pretext of being illiterate.

PW3 Kesar Singh has stated that his son had gone to village Lutheri to meet his daughter on 01.06.2008 as she was blessed with a son. He returned back on 01.06.2008. He was told about his son leaving the house with the appellant and Kaka on 02.06.2008 by his wife Paramjit Kaur.

A close scrutiny of the evidence reveals that the

testimonies of PW6 Paramjit Kaur and PW3 Kesar Singh do not inspire much confidence and cannot be made the foundation for convicting the accused respondent. Both PW3 and PW6, parents of the deceased revealed that their son had a relationship with Channi of village Lutheri. Deceased and Channi wished to get married to each other. While PW3 states that parents of Charanjit Kaur alias Channi had no knowledge regarding this relationship, his wife PW6 states that Channi's family was ready for marriage but they wished Harpreet Singh to live with Channi at her parental home i.e. as 'Ghar Jawai'. PW3 has admitted that he used to object to the relation of his son with girl Charanjit Kaur alias Channi. Their statements are riddled with inconsistencies and are not trustworthy or credible.

Material improvements/variations made subsequent to the initial version as contained in Ex.PW1/E raise a strong doubt upon the prosecution version. Perusal of the first application Ex. PW1/E reveals that PW3 the complainant had stated that their son had not returned since 01.06.2008 when he had gone to village Lutheri. It is subsequently stated that he returned back on 01.06.2008 and went again on 02.06.2008 alongwith the respondent and Kaka since deceased. PW6 has toed the line of her husband to try and project a scenario where the deceased had returned back home on 01.06.2008 and had left in the company of the accused on 02.06.2008. In these circumstances it cannot be said with certainty that the deceased had left his house on 02.06.2008 in the company of the accused.

Though the deceased being last seen in the company of the accused is itself suspect, the said circumstance by itself also cannot point to the commission of the offence by the accused. It is a matter of record that the appellant and the deceased were friends. PW6 raises a suspicion that her son might have been murdered by the accused. PW6 Paramjit Kaur for the first time introduces in her cross examination that a quarrel took place between the deceased and the respondent on account of some money which had been given by the deceased to respondent Sukhwinder Singh a week prior to the incident. Admittedly, no mention of such a quarrel has come on record at any earlier point of time. There is not an iota of evidence to indicate any reason or motive on the part of the accused to kill Harpreet Singh.

Coupled with the above circumstances, it is relevant to note that as per medical evidence cause of death of Harpreet Singh was shock and hemorrhage subsequent to multiple injuries to the lungs and spleen in the presence of Chlorocompound group of insecticides. There is no external mark of injury on the body. It is stated by the doctor that probable time that elapsed between the death and injury could not be ascertained as more than 72 hours had passed since death. It is to be noticed that no injury was detected on the neck as is sought to be projected by PW3 and PW6. Presence of chlorocompound group of insecticide was detected. Evidence on record is clearly deficient to prove that the respondent is guilty of the offence as charged.

Reference was made to certain phone calls received by the deceased Harpreet Singh on the fateful day but there is no evidence to show that such calls had been made by Sukhwinder Singh or that Sukhwinder Singh was in any manner connected with the said phone calls. It is relevant to note that PW6 Paramjit Kaur merely expresses an apprehension that her son might have been killed by Sukhwinder Singh and thrown in the pond near Octroi post. There is no discernible reason for the respondent to have acted thus. There is not an iota of evidence to prove any conspiracy hatched by the respondent alongwith Kaka and the girl Charanjit Kaur alias Channi who is not even an accused. On the contrary there is an admission of the parents of the deceased themselves to the effect that Harpreet Singh was in a relationship with said Charanjit Kaur alias Channi. Both of them wished to get married though PW3 Kesar Singh was not in favour of this alliance. Initial applications by the complainant himself reveal that no suspicion had been raised by him against anyone. Even in the application Ex. PW3/A dated 05.07.2008 he reveals that deceased Harpreet Singh and his friends including the respondent had consumed smack and other intoxicants and thereafter Harpreet Singh had proceeded to meet Charanjit Kaur alias Channi. The unfortunate parents have lost their young son but evidence on record does not point to the unequivocal guilt of respondent No. 2. Suspicion, however, strong can never take the place of proof.

Respondent- Sukhwinder Singh has been rightly

acquitted of the charge against him. A judgment of acquittal cannot be set aside until and unless there are substantial, strong or compelling reasons. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal. We find no perversity, infirmity or illegality in the impugned judgment, which would warrant interference by this Court.

Consequently, present appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

August 28, 2015
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