

IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Criminal Appeal No.D-1773-DB of 2014 (O&M)
Date of Decision : February 13, 2015

Swaran Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. A.K. Spehia, Advocate.

T.P.S. MANN, J.

The complainant has filed the present appeal against the judgment dated 22.12.2010 passed by the Sessions Judge, Jalandhar whereby respondents No.2 and 3, hereinafter referred to as 'the accused', stand acquitted of the charges under Sections 364, 302, 201/34 IPC.

In brief, the prosecution case is that on 29.2.2004, the appellant's son Tarsem Singh, who was an electrician by profession, after finishing his work, was present at his house and watching television, where Rakesh Kumar accused came and took him on his motorcycle for attending a marriage party. At that time, appellant's wife Mohinder Kaur was present in the house. Thereafter, Tasem Singh did not return home. When the appellant enquired from accused Rakesh Kumar about the whereabouts of his son, Rakesh Kumar denied having taken Tarsem Singh with

him. Further case of the prosecution is that one Sucha Singh resided in the neighbourhood of the appellant. Sucha Singh's daughter Rajni was having illicit relations with Prem Kumar, who had been visiting the shop of Tarsem Singh for purchasing articles. Sucha Singh, his wife Jaswant Kaur and their sons Dilbagh Singh and Gurpreet Singh had threatened appellant Swaran Singh that he was having hand in the elopement of Rajni with Prem Kumar and they would not leave his son Tarsem Singh. The appellant had been searching for his son but could not find him. However, he had firm belief that Rakesh Kumar, Sucha Singh and his sons had kidnapped Tarsem Singh.

On the statement of Swaran Singh, FIR No.57 dated 30.5.2005 was registered at Police Station Division No.5, Jalandhar under Sections 364/34 IPC. Statements of the witnesses were recorded. Accused could not be arrested and were declared proclaimed offenders. Subsequently, challan was presented and when the case was fixed for recording of evidence of the prosecution under Section 299 Cr.P.C., the two accused, namely, Rakesh Kumar and Dilbagh Singh were arrested and challaned.

The trial Court, after going through the evidence and hearing learned counsel for the parties, came to the conclusion that chain of circumstances was not complete as the prosecution witnesses were not trustworthy and reliable. There was also delay in recording the statements of the material witnesses.

Accordingly, reasonable doubt existed in the prosecution case

and, therefore, benefit of the same ought to be given to the accused. Both the accused were, therefore, acquitted of the charges against them.

As the present appeal was filed after a delay of 1344 days, an application under Section 5 of the Limitation Act has been filed for condonation of the said delay. However, without taking note of any delay in the filing of the appeal, this Court finds it to be appropriate to decide the appeal itself on merits, after hearing learned counsel for the appellant. As such no order is being passed on the application filed under Section 5 of the Limitation Act.

Having heard learned counsel for the appellant, this Court finds that though the incident of kidnapping had taken place on the night intervening 29.2.2004/1.3.2004 yet it was only on 16.3.2004 that the appellant had visited the Police Station and got entered DDR No.13. In the said DDR, the appellant got recorded that his son had left the house without telling anyone and despite making an attempt to search for him, he could not find Tarsem Singh. Therefore, the version of the appellant, while lodging the FIR that it was Rakesh Kumar accused, who had taken away his son Tarsem Singh, was not brought on the record while lodging the DDR. Further, the appellant knew one Kehar Singh for the last 30 years and claimed to have informed him regarding his son but said Kehar Singh did not accompany him to the Police Station to get his statement recorded.

In support of evidence of last seen, the prosecution relied upon the testimony of PW6 Avtar Singh, who stated that he had seen Tarsem Singh sitting on the pillion seat of the motorcycle driven by Rakesh Kumar. It was also stated that there was one more person sitting on the motorcycle alongwith them. However, it is a matter of record that the statement of Avtar Singh was recorded by the police only on 22.4.2009. Further, if Dilbagh Singh was also sitting on the motorcycle then Tarsem Singh would not have accompanied him as PW4 Mohinder Kaur testified that there were inimical relations between them. Avtar Singh did not disclose about these facts to either Swaran Singh or to the police. He admitted the fact that pamphlets were distributed by the police regarding disappearance of Tarsem Singh and only, thereafter, he informed the police of having last seen Tarsem Singh going with the accused on the motorcycle on 29.2.2004.

PW7 Sukhwinder Singh has testified that he had overheard accused talking to each other about the sister of Dilbagh Singh eloping with Prem Kumar and Tarsem Singh had a hand in the said elopement. That by itself is not sufficient to conclude that the accused had taken Tarsem Singh and, thereafter, killed him. Moreover, this witness got his statement recorded only on 22.4.2009 although he claimed to have heard the accused talking on 20.3.2009.

While lodging the FIR, the appellant had stated that

when his son was taken away by Rakesh Kumar, his wife

Mohinder Kaur was present in the house. He did not state anything about his daughter Sukhwinder Kaur also being present at the relevant time i.e. on 29.2.2004 at about 8.00 p.m. In such a situation, the testimony of PW2 Sukhwinder Kaur that Rakesh Kumar had come to her house and taken her brother to attend the marriage cannot be accepted. Moreover, her statement came to be recorded by the police on 30.5.2005 i.e. after a delay of one year and three months of the incident of kidnapping. As regards PW4 Mohinder Kaur, mother of Tarsem Singh, it may be noticed that she did depose about her son Tarsem Singh being taken away by Rakesh Kumar and when they went to the house of Rakesh Kumar to enquire about their son, Rakesh Kumar's father stated that Tarsem Singh had gone to the house of Dilbagh Singh, she also admitted that as they were not on speaking terms with Dilbagh Singh and his family, they did not go to his house. Merely because the complainant party was not on speaking terms with Dilbagh Singh and his family is no ground to hold that the complainant party was justified in not going to the house of Dilbagh Singh. They could have raised hue and cry in front of the house of Dilbagh Singh on account of being not able to trace out Tarsem Singh. In any case, they could have reported the matter to the police at the earliest. As is apparent from the record, the machinery of law was set into motion only on 16.3.2004 when the appellant made statement before the police and on its basis DDR No.13 was recorded. PW5 Kuldeep Singh claimed to have seen the occurrence. According to him on 29.4.2004 at about 8.30 a.m.,

when he was returning home and reached the bridge of canal, he saw both the accused hitting Tarsem Singh with a heavy article, as a result of which Tarsem Singh died. His dead body was disposed of in the canal. He admitted the fact that after 29.4.2004, he had met the appellant on a number of occasions and had been apprised by the appellant about missing of his son but he never told the appellant regarding the occurrence. He also admitted that he had not talked about the above said facts to anyone and for the first time he was stating this fact in the Court. He also did not talk to anyone in his family about the incident of 29.4.2004. His statement came to be recorded by the police only on 22.4.2009 i.e. after the gap of five years. His version that out of fear, he did not disclose this fact, cannot be believed.

In view of the above, it is made out that the acquittal of the accused respondents is well merited. No case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

February 13, 2015
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