

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-178-DB of 2015 (O&M)

Date of decision : 12.03.2015

Amandeep Kaur

.....Appellant

Versus

State of Punjab and others

....Respondents

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

Present: Mr. K.B.S. Mann, Advocate
for the appellant.

LISA GILL, J.

Complainant - Amandeep Kaur has preferred this appeal impugning judgment dated 03.09.2014 passed by learned Sessions Judge, Sri Muktsar Sahib whereby accused Sukhjinder Singh @ Kala and Manga Singh - respondents No. 2 and 3, have been acquitted of the charge of having committed an offence punishable under Section 302 read with Section 34 IPC.

As per the prosecution version, application dated 05.05.2013 was submitted by complainant - Amandeep Kaur to Senior Superintendent of Police, Sri Muktsar Sahib with copies to others for taking action against the accused respondents – Kala, Goldy and 4/5 unidentified persons for causing the death of her husband Sarabjit Singh. She averred to be married with Sarabjit Singh five years ago, who ran an Orchestra near Devi Lal Park,

Mandi Killianwali in a rented shop. He was coming home on 01.03.2013 as usual. At about 7.30/7.45 p.m., a driver telephonically informed her brother-in-law Shivraj Singh that 6/7 unknown persons had kidnapped Sarabjit Singh and taken him in a Bolero car near Devi Lal Park. Her brother-in-law Shivraj alongwith Gurjant Singh and Bhagwan Singh proceeded to the police post Killianwali at about 11.45 p.m./mid night and lodged a report about Sarabjit Singh being missing. They searched for Sarabjit Singh but to no avail. They were told by MHC at police post, Killianwali on 02.03.2013 that a person was admitted in Civil Hospital, Sirsa last night. Gurjant Singh proceeded to the Civil Hospital, Sirsa and Sarabjit Singh was found to be admitted in the hospital. It is alleged that the complainant alongwith Head Constable Gamdoor Singh went to the Civil Hospital, Sirsa. At about 2.15 p.m. Head Constable Gamdoor Singh recorded the statement of Sarabjit Singh in the presence of complainant and Gurjant Singh. Sarabjit Singh revealed that Kala Singh, Goldy alongwith 4/5 other unidentified persons kidnapped him and inflicted severe injuries. Sarabjit Singh was referred to Astha hospital on 02.03.2013 and further to Ganga Ram Hospital, New Delhi on 08.03.2013. However, he succumbed to his injuries on 09.03.2013 at about 1.37 p.m. Complainant alongwith Gurjant Singh allegedly visited the police post time and again praying for action to be taken against the accused but it emerged that the police joined hands with the accused, who were also threatening the complainant. She prayed for action to be taken against the accused persons.

On the basis of this application, FIR No. 105 dated

18.08.2013 under Sections 302/304 IPC was registered. Post mortem of the deceased was conducted by PW 9 Dr. Jatin Bodwal, Assistant Professor, Department of Forensic Medicine, Maluana Azad Medical College, Delhi. Cause of death was 'craniocerebral damage consequent upon blunt force trauma to the head via injury no. 1 which was sufficient to cause death in ordinary course of nature'.

On completion of investigation, challan/report under Section 173 Cr.P.C. was submitted against the accused respondents. Charge was framed against them to which they plead innocence and claimed trial. Respondent – Sukhjinder Singh claimed that he had not caused any injury to the deceased neither he was known to him. He denied his name to be Kala Singh or his father's name to be Laddi Singh. Respondent – Manga Singh also claimed that he had not caused any injury to Sarabjit Singh and neither he was known to him. He also did not know Goldy.

Prosecution examined 16 witnesses to prove its case. The trial Court on appreciation of evidence on record and the facts and circumstances of the case acquitted the respondents accused of the charges against them as it was found that the prosecution had failed to establish their guilt beyond shadow of reasonable doubt.

Learned counsel for the appellant contends that evidence on record is sufficient to prove the guilt of the accused persons. The entire evidence should have been considered as a whole and the factum of some of the prosecution witnesses not supporting the prosecution case is not material. Complainant as well as Gurjant

Singh have given consistent versions pointing to the guilt of the accused. In the facts of the case, acquittal of the accused persons is unjustified and illegal.

We have heard learned counsel for the appellant and gone through the facts of the case. It is revealed that there is no evidence on record to show that any report regarding missing of Sarabjit Singh was ever registered at police post Killianwali on 01.03.2013. There is no statement of Sarabjit Singh as allegedly made on 02.03.2013 on the record of the case. Application by the appellant Amandeep Kaur, on the basis of which FIR No. 105 dated 18.08.2013 was registered, was submitted on 17.04.2013. Admittedly, there is no document on record to prove any action being initiated as mentioned above against the accused from 01.03.2013 to 16.04.2013. In these circumstances, delay in lodging of the FIR is indeed material and raises a doubt about the version being the most natural and probable one. Probability of deliberation and concoction cannot be ruled out.

In order to prove injuries being inflicted on Sarabjit Singh by the accused persons, prosecution sought to examine PW1 Taini Mohammad, PW2 Mahinder Singh, PW3 Jagtar Singh. These are the persons before whom the accused allegedly made extra judicial confession regarding commission of the crime. Said witnesses rather than supporting the prosecution version have stated that the accused are innocent and no such occurrence had taken place. Prosecution version has not been supported by any of these witnesses causing a further doubt in the prosecution story.

Furthermore, another glaring aspect is that there is no statement on record allegedly made by the deceased Sarabjit Singh on 02.03.2013 before Head Constable Gamdoor Singh (PW12) as alleged by the complainant. Head Constable Gamdoor Singh (PW12) infact testifies that he sought the doctor's opinion at Civil Hospital, Sirsa on 02.03.2013 regarding fitness of the injured for making a statement. He was declared unfit to make a statement vide Ex. PW12/B. On 03.03.2013 he again submitted an application regarding fitness of the patient before the Incharge, Astha Hospital, Sirsa but patient was not found fit for making a statement. An application was moved again by him on 05.03.2013 for the same purpose and yet again Sarabjit Singh was declared unfit to make a statement vide Ex. PW12/F. He has categorically stated in his cross examination that Sarabjit Singh never suffered any statement before him on 02.03.2013. He verified that patient was declared unfit to make a statement. There is no such statement on record as alleged by the complainant.

It is revealed that Sarabjit Singh was admitted at Civil Hospital, Dabwali in an unconscious state. Name of the injured and his parentage is mentioned as unknown in the medico legal report due to this reason. Evidence on record indicates that from 02.03.2013 till 09.03.2013 Sarabjit Singh remained unconscious. Doctor's opinion is on file reflecting that he was unfit to make a statement on the said dates. Therefore, it would not be safe to rely upon the oral evidence of Gurjant Singh and Amandeep Kaur in isolation, without any corroboration, to convict the accused persons

for the murder of Sarabjit Singh.

We find no illegality, infirmity or perversity in the impugned judgment dated 03.09.2014. Learned counsel for the appellant is unable to point out any such strong or compelling reasons or circumstance/circumstances which would persuade us to interfere in the acquittal of respondents No. 2 and 3.

Consequently this appeal is dismissed. Impugned judgment dated 03.09.2014 passed by learned Sessions Judge, Sri Muktsar Sahib is upheld.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 12, 2015
rts