

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA D-680-DB of 2015 (O&M)
Date of Decision: 05.10.2015

Karamjit Kaur

...Appellant

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Aditi Girdhar, Advocate, for the appellant.

HEMANT GUPTA, J.

The present appeal has been preferred by Karamjit Kaur, mother of the deceased Boota Singh, aggrieved against the order of acquittal of the respondents passed by the learned Sessions Judge, Patiala, on 02.03.2015.

As per the statement (Exhibit PW3/1) of the appellant recorded by Inspector Gurpreet Singh on 11.4.2011, her son Boota Singh left his house on 27.03.2011 after taking meals at the house of his friend Satnam Singh. On 28.03.2011, Satnam Singh went to the house of Boota Singh at 7.00 a.m. He found his room locked. It was on 29.03.2011 at about 5.00 p.m., she enquired from Satnam Singh, who informed her informed that Boota Singh was not responding to the calls on mobile phone. On the basis of such statement, earlier a DDR Exhibit PW-20/A was recorded which was followed by statement Exhibit PW3/1 made on 11.4.2011. In the said statement, the appellant stated that her son was a witness in an FIR against accused

Balkar Singh for committing rape upon Palwinder Kaur. In view of the said fact, Harbans Singh son of Gujjar Singh, Ajit Singh son of Gujjar Singh and Fauji Ram Sarup son of Gujjar Singh, Bittu Singh son of Ajit Singh, Balkar Singh @ Rinku son of Ajit Singh, Satnam Singh son of Harbans Singh, all residents of Dandrala Kharaaur had been threatening her son. She further stated that a quarrel had taken place between Balkar Singh and her son and an FIR for an offence under Section 307 IPC was registered against her son Boota Singh and he remained in custody for four months. She was terrified and shifted Boota Singh to her nephew's place at Ambala whereas her daughter-in-law Sandeep Kaur along with her grandson went to her parental village Banbhora. Boota Singh was residing at Ambala but went to village Dandrala Kharaaur on 27.3.2011 and had taken his dinner at the place of Satnam Singh at 9.00 p.m. He went to his place with a promise to come to Satnam Singh next day at 7.00 a.m. But on the next day Satnam Singh found the house of Boota Singh locked.

On such statement, the police started investigation process; recorded statement of Satnam Singh and completed other formalities. It was on 15.4.2011, the dead body of Boota Singh was recovered on Dhainthal – Lalgarh Pathway i.e. alongside the banks of Bhakra Canal. It was on 18.4.2011 the accused was arrested.

The prosecution relied upon a disclosure statement made by Balkar Singh on 27.4.2011 to the effect that during night they had thrown Boota Singh into Bhakra Canal and was drowned in the canal by means of one baton, which has been kept concealed in the ditches near bridge of Bhakra Canal in the area of village Dhainthal, which was in his exclusive knowledge and possession and he could get the same recovered. Another disclosure statement of Kuldeep

Singh was recorded on 27.4.2011 in which he stated that after throwing Boota Singh into Bhakra Canal, he was drowned in the canal and at that time the torch used by them was kept concealed at a distance of about 100 to 150 steps in the bushes towards Patiala from the bridge of Bhakra Canal. It was on 21.04.2011, the car of the deceased was taken into possession after the same was recovered from the Bhakra Canal by the police of Police Station Ghagga. Subsequently, another disclosure statement Exhibit PW20/P is said to have been made by Balkar Singh, regarding removal of C.D. Player and a speaker from Car bearing No. PB11Y7999 before throwing the same into the canal.

On completion of investigation, the prosecution was launched against accused Balkar Singh and Kuldeep Singh, both sons of Ajit Singh. The material witnesses of the prosecution PW1- Sukhwinder Singh; PW2-Satnam Singh and PW10- Mohan Singh, turned hostile. Appellant appeared as PW3 and supported her statement and proved the recoveries. PW11-Harjit Singh was examined to prove that Harbans Singh and Ram Singh Swarup were standing near the car and Boota Singh was crying inside the room of the house. An application for summoning of the said accused (Harbans Singh) was submitted, but subsequently withdrawn on 1.8.2014.

In her testimony PW3-Karamjit Kaur stated that there were strained relations between the accused and her son Boota Singh. The learned trial Court found that the appellant is not reliable and trustworthy witness as there were material improvements made in her earlier statement made to the Police. Not only the Court found improvements about the role of the accused and that the involvement of the accused in a case having committed rape upon Palwinder Kaur,

but also the fact that she had not given the statement that the accused chased the vehicle or his vehicle with a view to kill her. In fact, it has come on record that an FIR was lodged against her son for an offence under Section 307 IPC and her son remained in custody for about four months. The Court found that when she made her first statement on 30.03.2011 she did not suspect any of the accused of having committed murder of her son and that the version now put by her was an afterthought. She was at Ambala on 27/28.3.2011 and had gone to village on 09.04.2011. Therefore, she did not have the first hand knowledge of the incident. The Court found that there could be a motive on the part of the complainant since her son remained behind bar for few months on a complaint of the accused.

The Court noticed the statement of PW17-Lakha Singh, ASI, who deposed that he found two bodies floating on 5.04.2011, one was of a person aged 25 years and other was that of 50-55 years. A public notice was published in the newspaper on 8.04.2011 and Karamjit Kaur, appellant came to them on 9.4.2011 and identified that of her son Boota Singh.

The learned trial Court found that the recovery of baton (dang) got recovered in pursuance of the statement of Balkar Singh and torch pursuant to the statement of Kuldeep Singh, did not appear to be much convincing. Such type of torches and batons are easily available in the market and could easily be planted upon the accused. No attempt was made to get the fingerprints available on the baton and torch compared with those of the accused. The Court found that the disclosure statements are relevant only to the extent of recovery of baton and torch. Similarly, recovery of accessories of the car i.e. C.D.Player and speaker, do not directly link accused with the

crime. The learned trial Court, thus granted benefit of doubt to the accused and consequently acquitted them.

We have heard learned counsel for the appellant and find no merit in the present appeal.

The dead body was recovered on 5.4.2011 and the car was recovered from the Bhakara Canal by the Police of Police Station Gugga. The only evidence of the prosecution is that of Karamjit Kaur appellant and said statement is relevant only to show enmity of the accused with Boota Singh. The enmity is a double edged weapon. Since the deceased remained in custody on the complaint of the accused, that could very well be a motive for the appellant to implicate the accused for the offence. The deceased is said to have been with Satnam Singh on 27.04.2011 and on the next day Satnam Singh found his room locked. Satnam Singh has not supported the prosecution case. Therefore, the fact that the deceased was in the company of Satnam Singh on the stated date and time, is not proved. Apart from Satnam Singh, there is no evidence that the deceased was not available in his room on 28.4.2011. The recovery of baton and C.D. Player, speaker etc., are not the incriminating circumstances, which are sufficient to prove the charges against the accused. Such recovery is of routine articles only, which are easily available in the market. The articles recovered are without any distinctive marks. It is impossible that the accused would have taken a stereo of the car from the car and then thrown the same into Bhakra Canal. The manner of cause of death has not been explained by the prosecution. The entire prosecution story is improbable and the circumstances do not prove the involvement of the accused in the commission of the crime. The learned trial Court has considered the entire evidence in a proper

perspective to return a finding that the prosecution has failed to prove the charges against the accused.

We do not find any perversity or illegality in the order passed by the learned trial Court, which may warrant interference by this Court in the present appeal. Hence, the present appeal is dismissed.

(Hemant Gupta)
Judge

(Hari Pal Verma)
Judge

05.10.2015
ds