

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.Appeal D-189-DB of 2010
DATE OF DECISION: April 04, 2016

Pawan Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Saurabh Arora, Advocate for the appellant.
Mr.S.S.Dhaliwal, Addl.A.G., Punjab.

RAMENDRA JAIN, J.

This appeal arises out of a judgment of conviction and sentence passed by the Sessions Judge, Amritsar, whereby the appellant was convicted for commission of offences under Sections 317 and 304 Part-I of the Indian Penal Code and sentenced to undergo life imprisonment under Section 304 Part-I of the Indian Penal Code and slapped with fine of Rs.5,000/- with default clause; further sentenced to undergo rigorous imprisonment for five years under Section 317 of the Indian Penal Code. The sentences were ordered to run concurrently.

On 30.1.2008, ASI Satnam Singh along with other police officials was present behind G.T. Road near Jain Samadhi Mandir. A dead body of infant of about 25/26 days, wrapped in a blanket, was found lying in the bushes

near the temple. A ruqa was sent to the Police Station. The formal FIR was registered. The dead body of infant was photographed. Inquest proceedings were initiated. Statements of relevant witnesses were recorded. The dead body of infant was sent for post mortem examination. The wearing apparels of the deceased and blanket were taken into police possession and converted into parcel which was sealed by the Investigating Officer with the seal 'SS'. During investigation, Sanjiv Kumar, Vice President, Bhartiya Janta Party, SC Morcha, Amritsar reported to the police that on 30.1.2008, appellant had visited his home at 10.00 a.m. and had made extra judicial confession before him that he had committed a mistake of throwing her newly born baby daughter near Mal Mandi, Amritsar and lodging a false report that some unknown persons had forcibly taken away his girl child. The reason for doing this wrong was that since he had already a son, birth of a daughter on 28.1.2008 was against his expectation, as he had wished for birth of a son, therefore, on 29.1.2008, he took his daughter for taking medicine and abandoned her by throwing in the bushes. The witness in order to help the appellant took him to Police Station "A" Division, Amritsar. The statement of this witness was recorded under Section 164 CrPC. The appellant was arrested. After identifying the dead body of

infant by Manju Rani wife of the appellant, it was handed over to her. On completion of investigation, final report under Section 173 CrPC was presented before the concerned Magistrate.

Accordingly, the appellant was charge sheeted under Sections 317 and 304 Part-I of the Indian Penal Code.

In order to prove its case, the prosecution examined as many as ten witnesses.

The entire incriminating evidence was put to the appellant. He pleaded his false implication.

In defence, the appellant examined one witness.

After hearing learned counsel for both the parties, the trial Court convicted and sentenced the appellant as detailed above in the opening part of the judgment.

Learned counsel for the appellant has strenuously argued that the appellant has been falsely implicated in the case, inasmuch as, he was the first person who lodged the report with the police that while he was taking his infant daughter for medicines, she was forcibly taken away by some unknown persons at knife point. Rather than taking action against the real culprits, the appellant was fitted in the shackles of falsity to crack down the crime at the behest of Sanjiv Kumar, stock witness, who had earlier also, in FIR No.254 of 2008 under the Narcotic Drugs & Psychotropic

Substances Act, Police Station “A” Division, Amritsar, given evidence on behalf of the prosecution and, therefore, it was not safe to rely upon such evidence. Pin-pointing dent in the prosecution story, learned counsel also argued that the infant allegedly recovered by the police on 30.1.2008 was 25/26 days’ old, whereas, the girl child was born to his wife on 28.1.2008. Therefore, the alleged recovered child does not belong to him. The trial Court has not appreciated the evidence available on record in a prospective manner and has wrongly convicted and sentenced the appellant, requiring interference of this Court for giving benefit of acquittal.

On the other hand, learned counsel appearing for the State argued that the judgment of the trial Court is well-reasoned and based on appreciation of evidence. The appellant has rightly been convicted and sentenced by the trial Court.

After giving our thoughtful consideration to the arguments advanced by learned counsel for the parties, we find the present appeal completely meritless for the reasons to follow.

The trial Court has dealt with all the arguments raised before this Court. On appreciation of evidence, the trial Court reached the conclusion that the report lodged by

the appellant with the Police Station Kotwali, Amritsar, Ex.PK was totally false and concocted one. Had the appellant taken the infant to Dr.Gulati's clinic for medicine, he would have examined the said doctor as witness. However, this evidence is missing. What to talk of examining the doctor, even the complete identity of the said doctor was not given, nor any person was examined from the clinic. Report Ex.PK showing infliction of injury by some unknown persons with something of iron on his knee does not inspire any confidence of this Court to believe it to be true for the simple reason that he did not place any documentary evidence to show that the appellant had received any injury on his knee or any injury was found at the time of his arrest made by ASI Satnam Singh on 30.1.2008. Thus, the concocted projection by the appellant does not help him, rather it goes against him.

Though the argument of learned counsel for the appellant that it was not safe to rely upon the evidence of Sanjiv Kumar, stock witness, who had earlier given evidence in the case of Narcotic Drugs & Psychotropic Substances Act appears to be attractive, but does not hold water, inasmuch as, the veracity of his statement could not be shaken in spite of incisive cross examination. No doubt, extra judicial confession is a very weak piece of evidence and requires strong corroborating circumstances to sustain the

conviction. However, in the instant case, the story propounded by the appellant is surrounded with suspicion and not logically sound for allowing him to run from the clutches of crime. Mere saying that this witness is a stock witness or tout does not disqualify the veracity of his depositions, particularly, when no logical explanation was furnished for the death of infant. Sanjiv Kumar PW2 was the Vice President of Bhartiya Janta Party of the locality. He has specifically deposed that the appellant had made extra judicial confession before him that he had already a son and since the girl had born to him against his expectation, therefore, he had abandoned the infant in the bushes near Mal Mandi, Amritsar and lodged a false report that some unknown persons had forcibly taken away his infant child. The reason for making extra judicial confession before him is that he is responsible person of the society. Thus, it cannot be said that the extra judicial confession made by the appellant suffers from any infirmity.

The other argument of learned defence counsel that it is not safe to rely upon the statements of PW3 Satnam Singh, Investigating Officer and PW8 Dr. Asitesh Bajwa, who deposed that the infant was 25/26 days' old is meritless and substanceless, inasmuch as, the appellant did not bring any evidence to show that the infant was born on

28.1.2008. Moreover, the dead body of infant was identified by the wife of the appellant. Even after conducting the post mortem examination, the dead body of the infant was handed over to Manju Rani, wife of the appellant. Thus, it can be safely concluded that the infant belongs to the appellant.

Faced with this difficulty, learned counsel for the appellant prays that some lenient view may be taken in the matter of sentence. The appellant is having his own family. He has already suffered agony of the protracted trial. He prayed that the sentence awarded to the appellant may be reduced.

Keeping in view the facts and circumstances of the case, we allow the present appeal partly. The conviction is upheld. However, the sentence awarded under Section 304 Part I of IPC is reduced to rigorous imprisonment for ten years, whereas, sentence awarded under Section 317 IPC is maintained. Both the sentences shall run concurrently. The fine imposed and the default clause are also maintained.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

April 04,2016
KD