

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

**CRA-D-1173-DB of 2012
Date of decision : 6.12.2016**

Jaswinder Bawa @ Binder @ Ajgar	Appellant
v.	
State of Punjab	Respondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present : Mr. G.S. Sandhu, Advocate, for the appellant

None for the State

Mahesh Grover, J. (Oral) :

The appellant has challenged the conviction and sentence awarded to him vide the impugned judgment dated 23.10.2012 arising out of a trial pursuant to FIR No. 558 dated 27.10.2009 under Sections 302, 120B/34 IPC registered with Police Station Sadar, Patiala.

We may briefly set out the prosecution story, which relates to an incident on 26.10.2009, when deceased Kirti Kumar Sharma allegedly went missing, leading to lodging of DDR by his wife Saroj Sharma, in which she did not name anybody as suspect. The body of the deceased was discovered on the next day i.e. 27.10.2009 and FIR was registered with the son of the deceased as a complainant, largely narrating the version of the DDR but only to introduce Laila Ansari @ Khushbu and Ajgar (wrongly recorded Ajmer in the FIR) as the suspects.

It was stated in the FIR that on 26.10.2009, the deceased normally used to leave home at 8.00 a.m., to return for lunch and after having meals at 1.30 p.m., he did not return while his frantic wife waited till 9.00 p.m. and after making a brief search, lodged a complaint with the police.

The dead body of the deceased was recovered subsequently.

The police investigated the matter and presented a challan against the present appellant with a version that he was having illicit relationship with Laila Ansari @ Khushbu, who then and in conspiracy with each other committed the murder of the deceased.

This has to be seen in context of the complainant's version, who had stated that Laila Ansari @ Khushbu was working under the deceased as a labourer and she was instrumental in getting the deceased killed, whose nude body was recovered with one arm amputated.

The entire case of the prosecution against the appellant was built around an extra judicial confession, allegedly made by the appellant to PW6 and the recovery of a sword, few gold articles belonging to the deceased, as also clothes of the appellant recovered from a drain.

In his statement under Section 313 Cr.P.C., the appellant pleaded false implication. The trial Court on the basis of evidence, convicted the appellant while acquitting co-accused Laila Ansari @ Khushbu.

Learned counsel for the appellant contends with reference to the impugned judgment that the plea of extra judicial confession before PW6 is highly unreliable for the reasons that it has not been established that he was even known to the appellant and even though he claimed himself as Sarpanch, this fact was not established and in cross examination he conceded that he did

not know the appellant and also had nothing to show that he was a Sarpanch. He further admitted that he was illiterate, unable to read and write Punjabi and the signatures appended on the papers were obtained in the police station without disclosing its contents to him.

Apart from this, it is contended that the recovery effected from the appellant is also doubtful and even though it is stated that blood stained sword was recovered from the rice fields. No attempt was made by the prosecution to establish that the blood was of the deceased. That apart the jewellery items recovered were also not established to be of the deceased as neither any independent witness was joined at the time of recovery nor was any member of the family associated to acknowledge either the recovery of gold articles or the fact of it belonging to the deceased.

It is then contended that looking at these two aspects, the appellant's complicity in the commission of offence would be suspect, particularly, when no motive had been attributed and established during the course of evidence. It is stated that even if it is assumed that the appellant was having illicit relation with his co-accused Laila Ansari @ Khushbu, there is absolutely no reason to connect the deceased with this relationship so as to warrant a conspiracy to do the deceased to death.

There has been no representation on behalf of the State and we have to proceed to examine the impugned judgment as also the record with the assistance of the learned counsel for the appellant.

On appraisal of the entire material before us, we would determine the issues as thus :-

The DDR was recorded at the behest of the wife of the deceased on

27.10.2009 itself when the deceased went missing on 26.10.2009. Till that point of time, there was absolutely no suspicion qua any of the persons as the deceased had left his home for office after having lunch, in a routine manner, but failed to return, leading to some search by the wife of the deceased. On 27.9.2009 itself, the dead body of the deceased was discovered and his family was informed who identified him. The dead body of the deceased was naked with one arm amputated and the normal jewellery worn by the deceased, was missing. In the FIR, recorded by the son of the deceased, reference was made to Laila Ansari @ Khushbu purely on suspicion, with no evidence emerging to lend credence to such a doubt except the extra judicial confession.

The effect of an extra judicial confession and whether it is enough to sustain a conviction against the appellant would, thus, have to be evaluated.

It is a settled principle of law that extra judicial confession is a weak kind of evidence and warrants a close scrutiny and if un-inspiring, should not ordinarily be relied upon.

If the entire statement of PW6 including his cross examination is perused, it establishes that the said witness was not known to the appellant. Thus, it would be highly unnatural for a person who does not know the other to enjoy his confidence to reveal a fact, ordinarily a zealously guarded secret. It has been conceded by the said witness that he does not belong to the village, as his own village being 15 to 20 kms. away from that of the appellant. He also expressed ignorance about his being a Sarpanch in the village of the appellant. He then goes on to say that he knew the appellant as Asgar, who visited him in his office, where he carried on his real estate business. He then conceded that he has no record of Sarpanch and his signatures were obtained in the police

station after 3-4 days and then further conceded that he did not know how to read and write Punjabi and the contents on the signed papers were unknown to him. He could not explain the recovery of the sword or the clothes allegedly made in his presence.

Looking at these facts in their totality, we are of the opinion that the extra judicial confession is highly un-inspiring, for no person would disclose such a guarded secret to a person who is a complete stranger to him. Coupled with the fact that the said witness does not know what he has signed being totally illiterate, would lead us to a conclusion that such testimony of a witness cannot be accepted to be a foundation for recording a conviction.

Similarly, the recovery having been effected in the presence of this witness, who does not abide by it to recall the description of either the sword or the clothes, would also render this evidence untrustworthy and unreliable.

That apart the blood on the sword was not traced to the deceased by any Chemical Examiner's report and articles of the recovery especially those belonging of the deceased is also doubtful as there is nothing to suggest that they were got identified by the family of the deceased. Hon'ble Supreme Court in the case of **“Prakash v. State of Karnataka, 2014 (3) RCR (Criminal) 744”** has observed that a serological comparison of the blood of deceased and accused and the blood stains on his clothes was necessary but this was absent from the evidence of the prosecution. It was further observed that mere recovery of some ornaments from some people does not lead to any conclusion that the ornaments so recovered belonged to deceased.

Lastly, we are of the opinion that there is complete absence of motive ascribed to the appellant. Hon'ble Supreme Court in the cases of

“Budhya Satya Venkata S. Rao v. State of Andhra Pradesh, 1994 (3) RCR (Criminal) 606”, “Surinder Pal Jain v. Delhi Administration, 1993(3) RCR (Criminal) 195” and “Tanviben Pankaj Kumar Divetia v. State of Gujarat, 1997 (3) RCR (Criminal) 96 has held that though motive for murder may not be revealed in many cases but if evidences of murder is very clinching and reliable, conviction can be based even if the motive is not established. In a case of circumstantial evidence, motive assumes greater importance than in case where direct evidence for murder is available.

Thus, the entire sequential chain so crucial to establish a conviction, where circumstantial evidence is the foundation is totally lacking, which would lead us to conclude that the appeal deserves acceptance and acquittal of accused/appellant Jaswinder Bawa @ Binder as a consequence thereof.

Ordered accordingly.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

6.12.2016
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No