

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-847-DB-2013(O&M)

DATE OF DECISION: February 18, 2016

Neelam Rani

...Appellant

versus

Malkiat Singh and others

...Respondents

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

Present: Mr. J.K. Verma, Advocate for the appellant
Mr. S.S. Dhaliwal, Advocate for
Mr. K.D.S. Sodhi, Advocate for respondent No.1
Mr. Manoj Sharma, Advocate for
Mr. Sunil Polist Advocate for respondent No.2
Mr. F.S. Virk, Advocate for Respondent No.3
Mr. Praveen Bhadu, AAG, Haryana for
respondent No.4-State.

RAMENDRA JAIN, J.

CRM-35171-2013:

Sufficient cause has been shown for condoning the
delay of 246 days in filing the appeal.

Application is accordingly allowed.

CRA-D-847-DB-2013:

The appellant assails the judgment dated 31.07.2012
passed by the Additional Sessions Judge, Kaithal on two

counts:- (i) Inadequate punishment to undergo ten years rigorous imprisonment has been awarded to respondent No.1 under Section 364 IPC only (ii) Respondents No.2 and 3 have wrongly been acquitted of the charges framed against them. It is prayed that respondents No.1 to 3 be convicted under Sections 302/364/201/34 IPC and sentenced accordingly.

Briefly stated, on 14.3.2011, the appellant produced an application before the police, inter alia, stating that her husband Sukhdev Raj used to drive taxi. On 7.3.2011, at about 4.00 or 4.30 P.M. two young boys and a woman had hired their taxi for Nissing. On the same day, she made a mobile call to her husband, but no conversation did take place. Thereafter the mobile of her husband was found switched off. Till next day, her husband did not return home nor he could be contacted over phone. The appellant moved an application for search of her husband, but the police could not succeed as mobile phone of her husband was lying switched off. On 7.3.2011, the appellant came to know that Malkiat Singh, respondent No.1 in connivance with a young boy and a woman had abducted her husband for committing his murder on the pretext of hiring taxi. She prayed for legal action on the aforesaid complaint.

On the above complaint, FIR, Ex.P2 was registered under Section 364/34 IPC. During investigation, on 21.3.2011, Baljinder Singh, Sarpanch of village Prempura, District Kaithal got recorded his statement that accused Malkiat Singh, Sonu

and Gurmeet Kaur confessed their guilt before him regarding the commission of crime and requested to produce them before the police. Accordingly, offences under Sections 302/201/34 IPC were added. Respondent No.1-Malkiat Singh made a disclosure statement that he along with Gurmeet Kaur, respondent No.2 and Sonu, respondent No.3 had hatched a conspiracy to loot the vehicles hired Indica Car from Kaithal for Nissing. They allured Sukhdev Raj by giving Rs.200/- and took him to the bank of canal. Respondent No.2 on the pretext of vomiting asked to stop the car. Respondent No.3 put hand on the mouth of Sukhdev Raj. Respondents No.1 and 2 then strangled Sukhdev Raj with a belt to death. The belt with which Sukhdev Raj was strangled, his mobile phone and key of the car were kept concealed by respondent no.1 in an almirah in his house. It was further disclosed that respondent No.2 had kept the purse, old diary, currency notes of Rs.150/-, some documents and photograph of deceased Sukhdev Singh. Respondent No.2 and Respondent No.3 also suffered disclosure statements, confessing their involvement in the crime and demarcating the place of occurrence and got the recoveries effected pursuant to their disclosure statements. Thereafter, respondent No.1 got recovered damaged mobile of deceased Sukhdev Raj, a belt, a mobile phone make Nokia, mobile phone of respondent No.3 make Lava, Key of the car as well as Indica Car No.HR-100-8751. Respondent No.2 got recovered her mobile phone make

Nokia, old purse of Sukhdev Raj, his diary and two photos. However, the dead body of deceased Sukhdev Raj could not be recovered.

After completing the necessary formalities, challan was presented under Section 173 Cr.P.C.

Respondents No.1 to 3 were charge-sheeted under Sections 302/364/201 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 13 witnesses and also placed reliance on the documents Ex.P1 to P16. Statements of respondents No.1 to 3 were recorded under Section 313 Cr.P.C. putting the entire incriminating evidence which they denied and pleaded false implication.

After discussing the evidence in detail, the trial court convicted respondent No.1 Malkiat Singh under Section 364 IPC and sentenced him to undergo RI for 10 years while acquitted respondent Nos.2 and 3 of the charges framed against them.

We have heard learned counsel for the parties and with their assistance perused the record of the case.

Learned counsel for the appellant argued that there is sufficient material on record which proves the guilt of respondents No.1 to 3 beyond a reasonable shadow of doubt. It is proved by cogent and convincing evidence that respondents

No.1 to 3 abducted the deceased husband of the appellant, strangled him to death and threw his dead body in the canal.

The only evidence against respondents No.1 to 3 is that they had got demarcated the place of alleged murder of Sukhdev Raj vide demarcation memo, Ex.P15. However, the prosecution did not examine even a single witness in corroboration to their disclosure statements suggesting that Sukhdev Raj, deceased was murdered by respondents No.1 to 3. More so, in the absence of recovery of any dead body, it cannot be inferred that Sukhdev Raj had actually been murdered, inasmuch as, no circumstantial evidence indicating the death of Sukhdev Raj was available on record.

Moreover, though PW13 Lakhveer Singh has made a categorical statement that on 8.3.2011 a dead body of unknown person, wearing blue patterned pant and orange sweater, was passing through the diversion channel of canal, yet in her testimony, PW9 Neelam (appellant) testified that the clothes shown to her in police station, Safidon may or may not be of her husband whereas PW11-Naresh, brother of deceased gave a different version in his cross examination and remained silent in his examination-in-chief regarding identification of clothes. PW11 stated in cross-examination that an underwear was seen by him at police station, Safidon.

From this evidence, it cannot be inferred that underwear or clothes shown to PW9 and PW11 were that of

deceased Sukhdev Raj. No attempt was made by the police for getting the clothes identified which were found over the dead body passing through the canal diversion.

Another evidence which shakes the foundation of the prosecution case is that no identification parade for getting the respondents No.1 to 3 identified from PW6 Satish was conducted. According to PW6 Satish on 7.3.2011, when he was coming back to Kaithal from Gharaunda, he met deceased Sukhdev Raj who disclosed that he had to drop one woman and two boys at a Dera at Karnal. PW6 Satish stated that though he could not tell the names of those passengers, but could identify the accused (respondents No.1 to 3), who were present in Court. However, in his cross-examination, PW6 Satish stated that police had not shown the respondents No.1 to 3 to him who were present in Court.

There is no connecting evidence which could establish that the articles recovered pursuant to disclosure statements of respondents No.2 to 3 were of deceased Sukhdev Raj.

Thus, charge against respondents No.2 and 3 was not proved under Section 302/364/201 read with Section 34 IPC and they have rightly been acquitted by the trial Court.

As far as respondent No.1 Malkiat Singh is concerned, the prosecution has proved the recovery of car and its key at his instance vide recovery Memo, Ex.P.18. However, the prosecution could not give any satisfactory explanation as to

how the aforesaid articles recovered vide Ex.P.18 came to be possessed by him, though according to PW6 Satish at 6.30 P.M. the car was in possession of deceased Sukhdev Raj. Thus, the trial Court has rightly convicted and sentenced him for the charge of abduction under Section 364 IPC.

In view of the aforesaid discussion, we find no merit in the appeal. Accordingly, the same is hereby dismissed.

CRM-35172-2013:

Faced with the fate of dismissal of the appeal, learned counsel for the appellant seeks leave of the Court to withdraw this application for awarding compensation with liberty to avail of other remedies in accordance with law.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 18, 2016
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