

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

CRA-D No. 857-DB of 2014 (O&M)

Date of decision : August 09, 2016

Vishal Kumar

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vishal Munjal, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant – Vishal Kumar is aggrieved of the judgment dated 29.01.2014 passed by the learned Additional Sessions Judge, Sangrur to the extent that Sohan Singh - respondent No. 2, Ranjit Kaur - respondent No. 3, Binder Ram - respondent No. 4 and Jaggi alias Shamsher Singh - respondent No. 5 have been acquitted of the charges for the offences punishable under Sections 302, 201, 120-B IPC. Accused No. 2 - Charanjit Kaur has been convicted for the offences punishable under Sections 302 and 201 IPC and sentenced to undergo imprisonment for life, besides, pay a fine of ₹25,000/- and in default thereof undergo rigorous imprisonment for two months.

Hence, the applicant-appellant seeks leave to appeal against the

above said judgment dated 29.01.2014 to the extent of acquittal of respondents No. 2 to 5.

Prosecution was set in motion on the statement (Ex.PW8/A) of the applicant - Vishal Kumar son of Raghunath Gupta recorded by Inspector Randhir Singh (PW13) on 31.07.2010. Vishal Kumar stated that he was a resident of Sunami Gate, Sangrur, running a Chemist shop at the Mall road, Sangrur. The complainant and his father were in their shop at about 2.15 p.m. on 30.07.2010. Shortly thereafter, the complainant's father Raghunath Gupta left the shop on his motorcycle bearing registration No. PB-13Q-8889. When the complainant's father did not return till about 6.00 p.m., efforts were made to search for him. However, their efforts did not yield any results. The complainant came to know in the morning of 31.07.2010 that his father's dead body was lying near the canal minor. The motorcycle was also found lying near the dead body. The complainant alongwith Tarsem Lal son of Sukhdev Chand reached the spot on receipt of this information. They saw marks of strangulation around the neck of the complainant's father. Vishal Kumar stated that his father's mobile phone (No. 9914840022) was not in his pocket. His father had been murdered by some unknown persons by throttling him. Leaving Tarsem Lal near the dead body of Raghunath Gupta, the complainant proceeded to lodge a report in this respect. FIR (Ex.PW13/B) was registered under Sections 302 and 34 IPC on the basis of statement (Ex.PW8/A) made by the complainant. Inspector Randhir Singh alongwith other police officials reached the spot and prepared a rough site plan (Ex.PW9/A). Inquest

report (Ex.PW13/D) was prepared. Statements of Deepak Kumar Aggarwal (Ex.PW4/A) and Rajinder Singh (Ex.PW13/E) were recorded under Section 175 Cr.P.C. The dead body was identified by them to be of Raghunath Gupta. Constable Amrik Singh, Photographer was called on the spot for taking photographs at the place of occurrence as well as of the dead body. The dead body was sent through Head Constable Satnam Singh for conducting post mortem vide application (Ex.PW3/A). A black motorcycle bearing No. PB-13Q-8889 (Bajaj Discover) lying near the dead body was taken in possession vide memo (Ex.PW9/B). The parcel of the clothes of the deceased, duly sealed with seal of the doctor was handed over by Head Constable Satnam Singh and was taken in possession by Inspector Randhir Singh vide memo (Ex.PW9/C). As per the Post Mortem Report (Ex.PW3/D), the cause of death was asphyxia due to ante mortem throttling. A written request (Ex.PW13/F) was moved before the Senior Medical Officer, Civil Hospital, Sangrur for declaring the cause of death of Raghunath Gupta. PW3, Dr. Kirpal Singh vide endorsement (Ex.PW3/B) opined that 'cardiac findings are due to ventricular fibrillation occurring at the time of throttling'.

As per the prosecution version, the respondents - Sohan Singh, Binder Ram, Ranjit Kaur and accused Charanjit Kaur confessed their guilt before Ex-Municipal Councillor Sajjan Kumar (PW2) and Vinod Kumar son of Moti Ram (PW1). Vinod Kumar, PW1 is stated to have gone to the house of Sajjan Kumar Ex-Municipal Councillor on 02.08.2010 in respect to some work. Vinod Kumar was engaged in a conversation with Sajjan Kumar when the accused

Charanjit Kaur (convicted), Sohan Singh (respondent No. 2), Ranjit Kaur (respondent No. 3), Binder Ram (respondent No. 4) arrived at Sajjan Kumar's house. All of them confessed that they had killed Raghunath Gupta whose dead body had been found on 31.07.2010. It was revealed that Raghunath Gupta called Charanjit Kaur on 31.07.2010 at about 2.15 p.m. inquiring about the availability of a lady for sexual favours. Charanjit Kaur asked Raghunath Gupta to come to her house where Ranjit Kaur was available. After he obtained sexual favours from Ranjit Kaur, he was asked to pay by the accused persons. When the deceased Raghunath Gupta refused to do so, he was forcibly brought in the bed room of Charanjit's house by Charanjit Kaur, Sohan Singh, Binder Ram and Ranjit Kaur. Raghunath Gupta was done to death by the accused by throttling him. In order to dispose of the dead body, Charanjit Kaur telephonically called Binder Ram - respondent No. 4 and Jaggi alias Shamsheer Singh (respondent No. 5). Binder Ram and Jaggi put the dead body on the motorcycle of the deceased at about midnight on 30.07.2010 and threw the dead body near the minor distributory. The offence under Section 34 IPC was deleted and Section 201 IPC was added. Pursuant to the above said disclosure before Sajjan Kumar and Vinod Kumar, the above named persons alongwith Jaggi alias Shamsheer Singh were nominated as accused in this case. Binder Ram, Ranjit Kaur, Charanjit Kaur and Sohan Singh were arrested on 04.08.2010 on the basis of secret information. Respondent No. 5 - Jaggi alias Shamsheer Singh was arrested on 09.08.2010. However, Vinod Kumar (PW1) and Sajjan Kumar (PW2)

have not supported the prosecution version. They have categorically denied that the accused confessed to their guilt before them on 03.08.2010. Both of these witnesses have denied making any statement (Mark A by Vinod Kumar and Mark B by Sajjan Kumar) before the police in this regard.

A written request (Ex. PW13/G) was moved before the District Transport Officer, Sangrur for verifying the ownership of the motorcycle recovered on the spot. It was found to be registered in the name of Vishal Kumar – complainant. The call details of mobile No. 9914840022 which was issued in the name of Vikas Gupta (PW14), another son of the deceased were sought. The above said mobile number was allegedly used by the deceased though it was not recovered by the police authorities. Call details of mobile Nos. 9988805631 and 9888005631 in the name of Charanjit Kaur were also obtained. It was found that the deceased Raghunath Gupta and Charanjit Kaur, who was using telephone 9988805631 had talked to each other on the date of incident.

Challan/report under Section 173 Cr.P.C. was prepared on completion of investigation and submitted before the Court on 23.12.2010. Charge under Sections 302, 201, 120B IPC was framed against all the accused on 29.01.2011.

The prosecution examined as many as 14 witnesses to prove its case. PW1, Vinod Kumar son of Moti Ram and PW2, Sajjan Kumar did not support the prosecution case. Both these witnesses denied that any extra judicial confession had been made by any of the accused before them. Vinod Kumar denied that he ever made a

statement (mark A) before the police. Sajjan Kumar denied that he had made a statement (mark B) before the police. PW3, Dr. Kirpal Singh has proved that death in question was caused by asphyxia due to throttling. Mobile phone No. 9914840022 stated by Vikas Kumar PW14 to be used by Raghunath Gupta was not recovered.

The accused denied all the incriminating material and evidence put to them. They pleaded innocence and false implication. However, no witness was examined in defence.

Learned trial Court on appreciation of the evidence on record convicted the accused - Charanjit Kaur for the offences punishable under Section 302 and 201 IPC while acquitting all the other accused i.e. respondents No. 2 to 5 in this case. Charanjit Kaur was convicted primarily on the ground that there was evidence of the deceased being in contact with her through his mobile phone. Hence, aggrieved by the acquittal of respondents No. 2 to 5, the applicant-complainant has approached this Court.

Learned counsel for the applicant vehemently argues that there is ample evidence on record to convict all the accused persons. The fact that PW1, Vinod Kumar and PW2, Sajjan Kumar have not supported the prosecution case does not detract from the veracity of the prosecution case. Once the trial Court deemed it appropriate to convict Charanjit Kaur, on the basis of the same evidence acquittal of respondents No. 2 to 5 is not justified. The medical evidence on record reveals that Raghunath Gupta was done to death by throttling him. The call details of the phones used by the deceased and that of Charanjit Kaur reveal the complicity of all the accused. Sohan Singh

– respondent No. 2 is the husband of Charanjit Kaur. Charanjit Kaur has been convicted by the learned trial Court for the offences punishable under Sections 302 and 201 IPC. It is not possible that Charanjit Kaur alone could have committed the murder of Raghunath Gupta. Therefore, the learned trial Court has grossly erred in acquitting respondents No. 2 to 5 in this case. It is prayed that the impugned judgment be set aside to the extent of acquittal of the said respondents. They should be convicted for the offence punishable under Sections 302, 201 and 120B IPC and punished accordingly.

We have heard learned counsel for the applicant and have carefully gone through the record with his assistance.

The prosecution case is based on circumstantial evidence. It is a settled position that in a case resting on circumstantial evidence, the Court must adopt a very cautious approach. Conviction of an accused should be recorded only if circumstances are proved beyond reasonable doubt duly forming a complete chain unerringly pointing to the guilt of the accused. Suspicion, however, strong can never take the place of proof.

In the present case, it is not in dispute that all the accused were nominated in this case after the alleged extra judicial confession (mark A and B) by Charanjit Kaur, Binder Ram, Sohan Singh and Ranjit Kaur before Vinod Kumar (PW1) and Sajjan Kumar (PW2) on 03.08.2010. Respondent – Jaggi alias Shamsheer Singh was nominated on the basis of said extra judicial confession by the co-accused. In the present case both Sajjan Kumar and Vinod Kumar have denied that any of the accused suffered any extra judicial

confession before them. They have not supported the prosecution version in any manner. Extra judicial confession is a weak piece of evidence and has to be viewed with great care and caution. The Hon'ble Supreme Court in **Sahadevan & Anr. v. State of Tamil Nadu, (2012) 6 SCC 403** while summarising the evidentiary value and reliability of an extra-judicial confession observed as under:-

- i. The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution;
- ii. It should be made voluntarily and should be truthful;
- iii. It should inspire confidence;
- iv. An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
- v. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities;
- vi. Such statement essentially has to be proved like any other fact and in accordance with law.

In the instant case, there is no evidence on record apart from the above said extra judicial confessions to connect respondents No. 2 to 5 with the commission of the offence. An effort has been made by learned counsel for the applicant to suggest that the call details between mobile phone being used by the deceased - Raghunath Gupta (9914840022) and the mobile phone numbers 9988805631, 9888005631 reveal that there was contact between the deceased and Charanjit Kaur as well as between Charanjit Kaur and other accused persons. It is not in dispute that the mobile phone

(9914840022) alleged to be used by deceased was never recovered. PW14, Vikas Gupta has stated that the said mobile was often used by his father and was usually with him. PW13, Inspector Randhir Singh, the investigating officer in this case, has specifically admitted that as per the mobile phone record, there was no inter se contact on mobiles between Ranjit Kaur, Charanjit Kaur and Sohan Singh. An attempt to show that phone numbers 9988805631 and 9888005631 though in the name of Charanjit Kaur were being used by Charanjit Kaur and her husband Sohan Singh does not stand established from the evidence on record. In the absence of any specific and positive evidence to prove his complicity in the commission of offence, Sohan Singh cannot be convicted for the offences punishable under Sections 302, 201 and 120-B IPC, merely because he is the husband of Charanjit Kaur who stands convicted. The conviction of an accused cannot rest on presumptions and assumptions. The prosecution has to prove its case against the accused beyond any reasonable doubt.

The learned trial Court has rightly held that that is no evidence on record to establish the commission of offences in question by respondents No. 2 to 5. There is nothing to connect the said respondents with the offence in the form of direct or circumstantial evidence. A presumption cannot be drawn that Charanjit Kaur could not have murdered Raghunath Gupta on her own and disposed of his body as well. It was incumbent upon the prosecution to have proved that respondents No. 2 to 5 were actively involved in the murder of Raghunath Gupta as well the disposal of

his dead body. There is indeed no evidence on record to prove the complicity of the above said respondents in the commission of crime. Similarly, there is no merit in the contention of the learned counsel for the applicant that once Charanjit Kaur has been convicted, all the accused should have been convicted alongwith as there is similar evidence against them. The learned trial Court has rightly held that the evidence on record does not prove the complicity of respondents No. 2 to 5 in the commission of the offence of murder of Raghunath Gupta. It is trite that suspicion, however, strong can never taken the place of proof. It is incumbent upon the prosecution to prove its case beyond reasonable doubt against the accused persons.

In a case resting on circumstantial evidence, the chain of events has to be complete in every manner leading to no other hypothesis but the guilt of the accused. In the present case, the circumstances taken cumulatively do not form a chain so complete that it leads to an inescapable conclusion of the guilt of the accused. It cannot be held that the evidence on record points to no other hypothesis but the guilt of respondents No. 2 to 5.

Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in the impugned judgment, which warrants interference by this Court to the extent of the acquittal of respondents No. 2 to 5. Acquittal of the accused should not to be lightly interfered with until and unless substantial, cogent evidence is shown to have been ignored or overlooked or the judgment of acquittal suffers from a perversity or illegality. Simply because another view may be possible cannot be a ground for reversing a

judgment of acquittal. The Hon'ble Supreme Court in **Mahamadkhan Nathekhan versus State of Gujarat (2014) 14 SCC 589** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused. The presumption of innocence stands reinforced, reaffirmed and strengthened by acquittal by the trial Court.

Accordingly, leave to appeal is declined.

It is clarified that any observation in this decision will not have any bearing whatsoever on any appeal, which may be/has been filed by the accused - Charanjit Kaur. The matter in hand has been examined only qua respondents No. 2 to 5.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

August 09, 2016
rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No