

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

Crl. Misc. No.A-1492-MA of 2014(O&M)
Date of decision:-29.07.2016

State of Haryana

.....Applicant

Versus

Shri Bhagwan

.....Respondent

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

Present: Mr. S.S. Pannu, DAG, Haryana
for the applicant-State.

Mr. Amit Sheoran, Advocate,
for the respondent.

S.S. Saron, J.

The State of Haryana has filed the criminal miscellaneous application seeking leave to appeal against the acquittal of Shri Bhagwan (respondent) by the learned Sessions Judge, Jhajjar vide his judgment and order dated 11.04.2014. In terms of the said judgment, Yashbir @ Jasbir @ Jassu son of Bhagwan Singh has, however, been convicted for the offences punishable under Sections 302 and 201 Indian Penal Code ('IPC' - for short). He has been sentenced to undergo life imprisonment; besides, pay a fine of Rs.10,000/- and in default thereof undergo R.I. for one year for the offence under Section 302 IPC. He has also been sentenced to R.I. for five years; besides, pay a fine of Rs.2000/- and in default thereof undergo R.I. for six months for the offence under Section 201 IPC. Both the substantive sentences have been ordered to run concurrently. Along with the application for leave to appeal, criminal miscellaneous No. 29010 of

2014 has been filed seeking condonation of 60 days delay in filing the application seeking leave to appeal.

We have heard learned counsel for the parties and perused the record.

Inspector Om Parkash Meena of Police Station, Jaffarpur Kalan, New Delhi (PW-24) addressed a letter dated 24.11.2010 (Ex. P-30) to the Superintendent of Police, Jhajjar. It was mentioned therein that the police of Police Station Jaffar Pur Kalan, New Delhi on 12.11.2010 received a PCR call stating that a dead body was lying in the drain. Acting on the information, the dead body of an unknown lady, aged about 30 years, wearing a yellow colour suit-salwar, with her tongue clenched between her teeth, a rope tied around her neck, besides, a red colour printed cloth wrapped and tied on her mouth, was recovered. It appeared that the lady had been murdered by strangulating her else where and the body thrown in the drain water somewhere near place of recovery as the drain water had been flowing slowly towards village Chhawla from the Dhansa barrage side. The body, it was mentioned, was swollen and the jewellery on it was intact. This indicated that those who committed the crime were not interested in the jewellery. Case FIR No. 75 dated 12.11.2010 was registered at Police Station Jaffar Pur Kalan, New Delhi for the offences under Section 302 and 201 of the IPC.

It is further mentioned that the dead body was later identified to be that of Smt. Urmila @ Kuki wife of the convicted/accused No.1 namely Yashbir @ Jassu resident of Village Majri (Gubhana, Police Station Sadar, Bahadurgarh, Haryana). Yashbir @ Jasbir @ Jassu (convict/accused No.1) was arrested on 19.11.2010. He pointed out the place near village Issapur

where the dead body had been disposed of. His motorcycle had a breakdown for a few seconds while it was going over a wooden log lying across the road leading to village Dhansa at about 11.45 p.m. on 06.11.2010. The log had been laid by the village residents for keeping a night watch ('thikri pehra'). The place where the murder of Urmila @ Kuki had been committed was in the house of Yashbir @ Jasbir @ Jassu (convict/accused No.1) situated in Village Majri in the jurisdiction of Police Station Sadar Bahadurgarh. Murder had been committed by strangulating her with a rope and tying the mouth with a sofa cover so as to prevent bleeding from the mouth. Three pieces of the sofa covers had been recovered at the behest of Yashbir @ Jasbir @ Jassu (convict/accused No.1) from the sofa lying in the house. The recovered sofa covers were similar to the cloth piece tied around the mouth of the deceased at the time of recovery of the dead body. The doctor had sealed the same at the time autopsy of the dead body on 16.11.2010. From the evidence collected during investigation, it is stated that the murder of Urmila @ Kuki had been committed by Yashbir @ Jasbir @ Jassu (convict/accused No.1) with his associate in the jurisdiction of Police Station Sadar Bahadurgarh at 11.00 p.m. on 06.11.2010. According to the letter an FIR was asked to be registered and further investigation carried out. The case property along with copies of relevant documents, it was mentioned may be collected from Police Station Jaffarpur Kalan; besides, the custody of the accused was asked to be obtained through the concerned Court. On the basis of the said letter, case FIR No.479 dated 27.11.2010 was registered at Police Station Sadar Bahadurgarh for the offences under Section 302, 201/34 IPC.

During the investigation of the case by the police of Police Station Jaffarpur Kalan, Yashbir @ Jasbir @ Jassu (convict/accused No.1) made a disclosure statement that he had committed the murder with the help of his friend Shri Bhagwan (respondent). He disclosed that after committing the murder, he with the help of Shri Bhagwan (respondent) threw the dead body in drain No. 8. They had taken dead body on a motorcycle.

The production warrants of Yashbir @ Jasbir @ Jassu (convict/accused No.1) were obtained and he was arrested by the police of Police Station Bahadurgarh on 03.12.2010. He was remanded to police custody. He again made a disclosure statement and identified the place where he threw the dead body. Shri Bhagwan (respondent) was arrested on 21.12.2010. After his arrest, the case was further investigated and after completion of investigation a police report was filed in the Court of the learned Illaqa Magistrate, who committed the case for trial to the Court of Session.

Charges for the offences punishable under Sections 120-B; 302 and 201 IPC were framed against the accused to which they pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as 32 witnesses and also tendered documents including the FSL reports (Ex.P5) and (Ex.P6). The substance of the evidence appearing against them was put to them by recording their statements in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C. - for short). In defence, Banwari Lal (DW1) and Jai Pal (DW2) were examined.

The learned trial Court as already noticed has convicted Yashbir @ Jasbir @ Jassu (convict/accused No.1) but Shri Bhagwan (respondent) has been acquitted against which leave to appeal is prayed for.

The learned counsel for the State has referred to the evidence appearing against the respondent. It is submitted that EASI - Raj Kumar (PW-26) testified that on 21.12.2010, he was joined in the investigation in the case by SI Rajphool Singh (PW27). The police party was present at bus stop of village Majri. The accused Shri Bhagwan (respondent) was arrested by SI Rajphool Singh (PW27) in his presence. During interrogation Shri Bhagwan (respondent) made a disclosure statement Ex. P-32 and offered to demarcate the place where he and Yashbir @ Jasbir @ Jassu (convict/accused No.1) had thrown the dead body of Smt. Urmila @ Kuki after committing her murder. In pursuance of the said disclosure statement Shri Bhagwan (respondent) led the police party to the place of occurrence and pointed out the same. SI Rajphool (PW27) prepared a memo Ex. P-33. Thereafter, Shri Bhagwan (respondent) led the police party to drain No. 8 in the area of village Sarang Pur and pointed out the place where they had thrown the dead body of Urmila @ Kuki. SI Rajphool (PW27) prepared memo Ex. P-34 in this regard. It is submitted that the disclosure statement of Shri Bhagwan (respondent) would inculcate him in the commission of the crime.

In response, learned counsel appearing for the respondent has submitted that the fact of the place where the dead body had been thrown after the murder had been committed and the place of recovery of the dead body of Smt. Urmila @ Kuki were already known to the police, therefore, the disclosure statement (Ex.P32) would be inadmissible in evidence.

We have given our thoughtful consideration to the matter.

There are in the case insofar as Shri Bhagwan (respondent) is concerned, two sets of circumstances that can be said to be against him, which would require consideration. One is the disclosure statement of Yashbir @ Jasbir @ Jassu (convict/accused No.1), who stated that he committed the murder of his wife with the help of Shri Bhagwan. The other is his disclosure statement (Ex.P32). Insofar as the statement of Yashbir @ Jasbir @ Jassu (convict/accused No.1) is concerned, it is to be noticed that Shri Bhagwan (respondent) was jointly tried for the same offence along with him. Therefore, the statement of Yashbir @ Jasbir @ Jassu (convict/accused No.1) would be that of a co-accused and the evidentiary value of the same by itself is not a substantive evidence in the absence of other material and corroboration.

In Haricharan Kurmi v. State of Bihar, AIR 1964 Supreme Court 1184, a Constitutional Bench of Hon'ble the Supreme Court held that confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. It was said that in criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that

the charge is not proved against him, and so, he is entitled to the benefit of doubt.

In Pancho v. State of Haryana, (2011) 10 SCC 165, it was said by Hon'ble the Supreme Court that a confession cannot be treated as substantive evidence against the co-accused. Where the prosecution relied upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the Court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the Court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from the other evidence is right.

Therefore, it is liable to be seen as to whether there is other evidence apart from the statement of Yashbir @ Jasbir @ Jassu (convict/accused No.1) which would inculcate the respondent. Besides, whether the disclosure statement of the respondent is admissible in evidence.

It is quite evident that from the mere bald assertion of Yashbir @ Jasbir @ Jassu (convict/accused No.1), it cannot *per se* be said that the Shri Bhagwan (respondent) was also responsible for the commission of the crime. The other evidence is regarding the disclosure statement (Ex.P32) of Shri Bhagwan (respondent) demarcating the place where the dead body was thrown. The said fact was already known to the police as the letter dated 24.11.2010 (Ex.P30) that was sent by Inspector Om Parkash Meena of Police Station, Jaffarpur Kalan, New Delhi (PW24) to Police Station Jhajjar makes mention of the dead body lying in the drain. Besides, it is mentioned in the letter that it appears that the lady had been murdered by strangulation

somewhere else and the body had been thrown in the water of the drain somewhere near the place of recovery as the water in the drain had been flowing very slowly towards Chhawla village from the Dhansa barrage side.

In the circumstances, the place where the dead body had been discovered was known to the police of Police Station Jaffarpur Kalan, New Delhi and it is not a case where the police for the first time came to know from the statement of Shri Bhagwan (respondent) as to where the dead body was.

The learned counsel for the State, however, submitted that the fact where the dead body was thrown was not known to the police and Shri Bhagwan (respondent) had led the police party to drain No. 8 in the area of village Sarang Pur where the dead body was thrown.

This in fact would not be the correct position as in the letter dated 24.11.2010 (Ex.P30) it is stated by Inspector Om Parkash Meena (PW24) that Yashbir @ Jasbir @ Jassu (convict/accused No.1) was arrested on 19.11.2010 and he pointed out the place near village Issapur where the dead body had been disposed of. Therefore, the place where the dead body had been disposed of was known to the police and it is not a case where it came to the knowledge of the police for the first time.

In Pulukuri Kottaya and others v. Emperor AIR 1947 Privy Council 67, it was held by the Privy Council that Section 27 of the Evidence Act provides an exception to the prohibitions imposed by the preceding Section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the Section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be

deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered, may be proved. It was further held that the fact discovered must be coming to the knowledge of the police for the first time and not that it was already known.

Therefore, the facts where the dead body was disposed of and the place from where the dead body was recovered being known to the police cannot be used for inculcating the respondent in the commission of crime.

The learned trial Court has taken a reasonable view in acquitting the respondent and merely because another view may be possible would not be a ground to interfere with the findings and conclusions reached and recorded by the learned trial Court in acquitting the respondent. In the circumstances, no ground for grant of leave to appeal is made out to the applicant-State and the application seeking leave to appeal is declined.

Crl. Misc. No. 29010 of 2014 which has been filed for condoning the delay of 60 days in filing the application for leave to appeal is only academic and the same is accordingly dismissed.

It is, however, made clear that anything observed or stated herein shall not be construed as an expression of opinion on the merit of the appeal, if any, filed by Yashbir @ Jasbir @ Jassu (convict/accused No.1) against his conviction and sentence.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

29.07.2016
PA/A.Kaundal

Note:

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No