

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-457-DB of 2009(O&M)
Date of Decision : 03.02.2017

Lakhbir Singh and another
..... Appellants

Versus

State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.Rajinder Goyal, Advocate
for the appellants.

Mr. Randhir Singh, Addl.AG. Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 25.04.2009, vide which accused-appellant no.1-Lakhbir Singh @ Bhola and accused-appellant no.2-Jasbir Singh @ Jassa have been held guilty and convicted for the offences punishable under Sections 364, 302, 201 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and the order of sentence dated 28.04.2009, vide which they have been sentenced as under:-

Name of the Convicts	U/S	R.I	Fine	In default
Lakhbir Singh @ Bhola	364/34 IPC	3 years	Rs.5000/-	Simple imprisonment of six months
	302/34 IPC	Life imprisonment	Rs.5000/-	Simple imprisonment of six months
	201/34	3 years	Rs.3000/-	Simple imprisonment of three months
Jasbir Singh @ Jassa	364/34 IPC	3 years	Rs.5000/-	Simple imprisonment of six months
	302/34 IPC	Life imprisonment	Rs.5000/-	Simple imprisonment of six months
	201/34	3 years	Rs.3000/-	Simple imprisonment of three months

2. The brief facts giving rise to this prosecution are that on

12.06.2008, complainant-Naseeb Kaur (PW-10) made the statement Ex.P-34 to ASI Des Raj (PW-15) narrating therein that on 10.06.2008 at about 10.00/10.15.p.m., a quarrel took place between them and Jagtar Singh son of Karam Singh resident of village Faggu. After that quarrel, she and her husband-Pakhar Singh went to the house of Ram Chand @ Rama son of Kasturi Lal to hire the vehicle. They knocked at the door of Rama, but he did not open the door. In the meanwhile, accused-appellant no.1-Lakhbir Singh @ Bhola, accused-appellant no.2-Jasbir Singh @ Jassa and their co-accused Jagsir Singh @ Seera, Gurmeet Kaur @ Seeti and Rani Kaur @ Rani came there on a tractor make Swaraj. They all alighted from the tractor and abducted her husband-Pakhar Singh and took him away on the tractor with intention to kill him. She raised alarm, but none came-forward to help her. Thereafter, she rushed to her house and narrated the incident to her family members. They have been searching the victim till date. But, they did not find any clue of her husband-Pakhar Singh. He has been abducted by the aforesaid accused at about 1.00/1.30.a.m. on the intervening night of 10/11.06.2008. On the basis of statement Ex.P-34 made by complainant-Naseeb Kaur (PW-10), FIR Ex.P-16 was registered and investigation was initiated.

3. PW-15-ASI Des Raj, the Investigating Officer of the case inspected the spot and prepared the rough site plan of the place of occurrence Ex.P-14. He searched for the accused. On receiving the secret information, he conducted the raid at the Dhani of co-accused-Jagsir Singh @ Seera situated in the area of Village Pakka Shaheedan after joining PW-12-Kulwant Singh, son of deceased and apprehended both the accused-appellants and Jagsir Singh @ Seera. Thereafter, he interrogated accused-

appellant-Lakhbir Singh @ Bhola, Jasbir Singh @ Jassa and Jagsir Singh @ Seera turn by turn and they suffered the disclosure statements Ex.P-36, Ex.P-37 and EX.P-38 respectively. ASI-Des Raj (PW-15) telephonically informed PW-16-SI Devender Singh, SHO, Police Station Rori, who reached the fields of accused-Jasbir Singh @ Jassa and took over the investigation. PW-4 Dr. Ajay Kumar, Senior Scientific Officer, Scene of Crime, Office of Inspector General of Police, Hisar inspected the spot and prepared his report Ex.P-20. SI Devender Singh requested the higher officers to depute an Executive Magistrate to reach at the spot for further proceedings. PW-14-Dharam Pal, Naib Tehsildar, Kalanwali came at the spot. In pursuance of the disclosure statements made by accused-appellants and their co-accused-Jagsir Singh @ Seera, they demarcated the spot, where the dead body of Pakhar Singh was buried. The photographs of that place were taken. Then, in the presence of PW-14-Dharam Pal Executive Magistrate, the dead body was exhumed, which was wrapped in jute sheet (*Palli*). The dead body was identified by PW-11-Jasbir Singh, son of deceased and his nephew-Bant Singh. The Investigating Officer carried out the inquest proceedings and prepared the inquest report Ex.P-18. He also inspected the spot. The dead body was sent to General Hospital for autopsy vide application Ex.P-17. Thereafter, the Investigating Officer went to the spot from where deceased-Pakhar Singh was abducted and also the place where he was murdered. On the demarcation made by appellants and their co-accused-Jagsir Singh, he prepared the demarcation memos Ex.P-41 to P-43.

4. On 15.06.2008, appellants-Lakhbir Singh @ Bhola, Jasbir Singh @ Jassa and Jagsir Singh @ Seera further suffered the disclosure

statements Ex.P-44, Ex.P-45 and Ex.P-46 respectively with respect to the correct place of concealment of weapon and tractor. In pursuance of their aforesaid disclosure statements, accused-appellant-Lakhbir Singh @ Bhola got recovered a '*Danda*', which was kept in a sealed parcel and was taken into possession vide recovery memo Ex.P-47. Accused-Jasbir Singh @ Jassa got recovered the tractor trolley, a '*Lathi*' and '*Kassi*' (Spade). These articles were also taken into possession vide memo Ex.P-48. The '*Lathi*' and '*Spade*' was kept in sealed parcels. Jagsir Singh @ Seera got recovered the tractor, which was taken into possession vide memo Ex.P-50. The Investigating Officer also prepared the demarcation memos Ex.P-56 to P-58. On 29.06.2008, co-accused-Gurmeet Kaur and Manjit Kaur were also arrested. Thereafter, on completion of the formalities of investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented in the Court.

5. The case was committed to the Court of Sessions by the learned Judicial Magistrate vide order dated 08.09.2008.

6. Accused-appellants and their co-accused was charge sheeted for the offences punishable under Sections 148, 364, 302, 201 read with Section 149 of IPC by the learned trial Court vide order dated 07.10.2008 to which they pleaded not guilty and claimed trial.

7. In order to substantiate its case, the prosecution examined as many as sixteen witnesses.

8. After closure of the prosecution evidence, accused-appellants were examined under Section 313 Cr.P.C, wherein accused-appellant-Lakhbir Singh @ Bhola pleaded that on the night intervening 10/11.06.2008 at about 10.20.p.m., Kulwant Singh, Gora Singh sons of

Pakhar Singh, Banta Singh and Gurtej Singh @ Gagri sons of Darshan Singh committed house tress-pass by entering into their house and caused injuries to Jagtar Singh, his brother with Gandassa and caused injuries to his mother Baldev Kaur for which case bearing FIR No. 84 dated 11.06.2008 was registered under Sections 452, 326, 324, 323, 34 IPC at Police Station Rori against them. The previous litigation was also going on between them, which was pending in the Court. He further pleaded that he is innocent and has been falsely implicated due to previous enmity.

9. Appellant-Jasbir Singh @ Jassa also pleaded false implication being brother of Jagtar Singh and due to previous litigation between them and the complainant party pending in the Court. Both the appellants have also pleaded that they did not suffer any disclosure statement nor got recovered any weapon.

10. In the defence evidence, accused-appellants examined DW-1-Hardeep Chopra, Airtel Service Provider, Backside LIC Building, Sirsa. DW-2 ASI Raj Mal, the Investigating Officer of the case FIR No. 84 dated 11.06.2008, Police Station Rori, which was registered against Kulwant Singh (PW-12), Gora Singh sons of deceased-Pakhar Singh, Banta Singh and Gurtej Singh @ Gagri sons of Darshan Singh on the statement of Jagtar Singh son of Karam Singh resident of Village Faggu, District Sirsa. DW-3 Rajiv Garg, SDE (Mobile), Sirsa has proved the call details Ex.D-7 and Ex.D-8 of telephone no. 94163-52227 and 94166-45545. He also deposed that telephone no. 94163-52227 is in the name of Narinder Singh resident of Rai Pur Rani, Panchkula and phone no. 94166-45545 is in the name of Des Raj son of Ghasi Ram, Friends Colony, Sirsa. DW-4-Sunil Rana, Nodal Officer, Bharti Airtel Limited, C-25-Industrial Area- Phase-

II, Mohali has brought the record of telephone no. 99960-26214 issued in the name of Chand Ram son of Jai Krishan, House No. 1432, Ward No. 24, Mittal Colony, Sirsa and deposed that this telephone number was issued in the plan of Haryana Police, C/o S.P.Office, Sirsa. He also deposed about the incoming and outgoing call from this telephone on 12.06.2008 at 12.38.57 and proved the computerized copy of the said entry as Ex.D-9. Accused-appellants also tendered in defence evidence the copy of report under Section 173 Cr.P.C. of case FIR No. 84 dated 11.06.2008 Ex.D-9. Thereafter, the defence evidence was closed.

11. On appreciation of the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment of conviction held guilty and convicted appellants-Lakhbir Singh @ Bhola and Jasbir Singh @ Jassa for the offences punishable under Sections 364, 302, 201, 34 IPC, whereas co-accused-Manjit Kaur @ Rani, Gurmeet Kaur @ Seeti and Jagsir Singh @ Seera were acquitted of all the charges. Appellants were sentenced as mentioned in the upper part of the judgment vide impugned order of sentence dated 28.04.2009.

12. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by appellants-Lakhbir Singh @ Bhola and Jasbir Singh @ Jassa.

13. We have heard learned counsel for the parties and have meticulously examined the record of the case.

14. Initiating the arguments, Mr. Rajender Goyal, Advocate, learned counsel for the appellants contended that there is 36 hours delay in lodging the FIR, which has not been explained at all by the prosecution. It

is alleged that deceased-Pakhar Singh was abducted by the accused in the presence of complainant-Naseeb Kaur (PW-10). So, there was no reason not to immediately report the matter to the police. He contended that this period has been utilized by the complainant to fabricate and manipulate the version as a result of consultations and deliberations, which renders the prosecution case doubtful.

15. He further contended that the learned trial Court has acquitted co-accused-Gurmeet Kaur @ Seeti, Manjit Kaur @ Rani and Jagsir Singh @ Seera against whom also there was same set of evidence levelling similar allegations. He contended that once the prosecution evidence has been disbelieved *qua* co-accused, the appellants also are entitled for benefit of doubt and could not have been convicted on the basis of the same evidence.

16. He further contended that the alleged disclosure statements made by appellants are inadmissible in evidence. He contended that in the second disclosure statement, it has been mentioned that the previous disclosure statement was made by the appellants under fear. So, such disclosure statements cannot be taken into consideration. He further contended that the place of dead body was already known to the police. Thus, it cannot be stated that the dead body was recovered at the instance of the accused-appellants. Thus, he contended that there is no incriminating evidence to connect the accused-appellants with the commission of offence.

17. He further contended that the prosecution witnesses have admitted the presence of other independent witnesses of the village. Their presence has also been shown in the inquest report. But, none of them has

been joined. The prosecution case is based only on the statements of the interested witnesses and the police officials.

18. He further contended that there are material discrepancies in the statements of the prosecution witnesses. From the statement of PW-12-Kulwant Singh, the entire prosecution story with respect to the time and place of arrest of accused-appellants becomes doubtful. The prosecution witnesses are also discrepant with respect to the time of sending the information to PW-16-SI Devender Singh, SHO Police Station Rori and PW-4-Dr. Ajay Kumar, Senior Scientific Officer, Scene of Crime, IGP Office, Hisar. He further contended that as admitted by the prosecution witnesses, Dharam Pal, Naib Tehsildar is not visible in the photographs relied upon by the prosecution. Thus, he contended that the entire proceedings are manipulated and fabricated. Finally, he pleaded that the accused-appellants have been falsely implicated. In-fact PW-12-Kulwant Singh, his brother and cousin have caused injuries to Jagtar Singh, the brother of appellants.

19. On the other hand, Mr. Randhir Singh, Addl.AG, for the State of Haryana contended that the delay in lodging the FIR is satisfactorily explained. The family members of the victim were making efforts to trace out deceased-Pakhar Singh, who was abducted by the accused. He further contended that accused-appellants have voluntarily suffered the disclosure statements Ex.P-36 and P-37 and in pursuance thereof, they got recovered the dead body of deceased-Pakhar Singh in the presence of the Executive Magistrate. The proceedings regarding exhumation of the dead body was conducted in the presence of the Executive Magistrate, which cannot be doubted. He further contended that even the weapons of offence and the

vehicle have been recovered in which the deceased was abducted on the basis of the disclosure statements. He further contended that mere this fact that co-accused have been acquitted by the learned trial Court is no ground to grant any benefit to the appellants against whom the case is fully established.

20. We have given our thoughtful consideration to the aforesaid contentions.

21. As per the prosecution version, the occurrence took place on the night intervening 10/11.06.2008 at about 1.00/1.30.a.m. (night). The statement of complainant-Naseeb Kaur (PW-10) Ex.P-34 has been recorded by ASI Des Raj (PW-15) on 12.06.2008 at 1.40.p.m. The FIR EX.P-16 has been registered on 12.06.2008 at about 3.30.p.m. Thus, there is delay of about 36 hours in reporting the matter to the police. In the FIR itself, it is mentioned that they have been searching for the victim, but they could not find any clue of deceased-Pakhar Singh and thereafter they reported the matter to the police. It has come in evidence that on the basis of statement made by Jagtar Singh, the brother of appellants, case FIR No. 84 dated 11.06.2008 under Sections 452, 326, 324, 323, 34 IPC was registered at Police Station Rori against Kulwant Singh, Gora Singh sons of Pakhar Singh (deceased), Banta Singh, Gurtej Singh, the nephew of the deceased and they were wanted by the police in that case. That may be the reason that the complainant party might be hesitant to go to the police to report the matter and as a consequence thereof, the delay might have occurred.

22. The prompt lodging of the FIR can always not be a guarantee of the truthful version. Thus, mere delay in lodging the FIR is no ground

to discard the prosecution case, if the prosecution has brought on record the cogent, convincing and reliable evidence to prove the occurrence. The delay in lodging the FIR by itself is not sufficient to reject the prosecution case unless there are clear indications of fabrication. Reference can be made to case **Zahoor and others Vs. State of U.P. 1991(1) R.C.R. (Criminal) 484 (SC)**. In case **State of Punjab Vs. Avtar Singh 2009(1) R.C.R. (Criminal) 247**, the Hon'ble Apex Court has held that it cannot be laid down as a rule of universal application that whenever there is delay in lodging the FIR, the prosecution has to fail. Consequently, the delay in lodging the FIR in view of the circumstances mentioned above cannot be a ground to discard the prosecution case.

23. Learned counsel for the appellants has pointed out certain discrepancies and contradictions mostly with respect to timings in the statements of the prosecution witnesses. It is a fact of common knowledge that the observation regarding timings varies from person to person. There can be difference of timing even in two watches. The witnesses are not expected to depose with respect to timings with mathematical precision. Sometime, a witness casually observe the time and if he is questioned about the timing after some lapse of time the variation is bound to occur due to fading of memory. Moreover, the variation of timings pointed out by the learned counsel for the appellants in the statements of the prosecution witnesses namely PW-15-ASI Des Raj, PW-16-SI Devender Singh and PW-12-Kulwant Singh are only of some minutes. Such minor discrepancies/ variations in timings cannot be a yardstick to adversely affect the credibility of a witness. PW-12-Kulwant Singh is a rustic villager, which is evident from the fact that he has thumb marked the

statement recorded by the learned trial Court. So, he cannot be expected to be so accurate towards the timings and police proceedings. The Hon'ble Apex Court in case **State of Karnataka Vs. M.V. Manjunathgowda and Anr. 2003 (1) R.C.R. (Criminal) 543** has laid down as under:-

“One should not fail to take note that the witnesses are rustic villagers. It is difficult to expect them to remember the events with mathematical precision after a lapse of more than two years. It is a common knowledge that ordinarily human memories are apt to blur with the passage of time. More so in the present case, when witnesses are rustic villagers. In such a situation, there are bound to occur certain discrepancies, which are in the form of omission and they cannot be considered as fatal to their evidentiary value, otherwise trustworthy. At the same time, they are unexposed to the technicalities of urban life and they speak plainly what they saw and did. They are straightforward looking people, truthful and trustworthy. Their testimony cannot be thrown out on the ground that it lacks spontaneity.”

24. Moreover, no conclusion can be drawn by taking few sentences from the statement of a witness in isolation. If the entire statement of PW-12-Kulwant Singh is taken into consideration, the same fully corroborates the prosecution version with respect to apprehension of the accused from village Pakka Shahidan from the house of Jagsir Singh @ Seera and thereafter, their interrogation leading to the disclosure statements. Thus, the discrepancies pointed out by learned counsel for the appellants are minor and normal discrepancies. The normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. The normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal,

and not expected of a normal person. Reference can be made to case **Ram Udagar Singh Vs. State of Bihar 2004(2) R.C.R.(Criminal) 224 (SC)**.

25. In case **State of U.P. Vs. Naresh and others 2011(2) R.C.R. (Criminal) 364**, the Hon'ble Apex Court has laid down as under:-

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.”

Thus, in view of the aforesaid legal position, the discrepancies pointed out by learned counsel for the appellants, which are minor in nature, will not affect the credibility of the prosecution witnesses.

26. It is not necessary that each and every person who came to be present at the spot during the proceedings must be associated as a witness. It is a fact of common knowledge that in villages whenever the police visits to investigate such a crime, the villagers assemble just as spectators. It will be very difficult for the Investigating Officer to rope in all the persons and to join them as a witness. Thus, if the Investigating Officer has not cited all the persons named in the inquest report as a witness to exhumation proceedings of the dead body that cannot adversely affect the veracity of the prosecution case particularly when these proceedings have been supervised by PW-14-Dharam Pal, Naib Tehsildar, Kalanwali.

27. Statements of PW-10-Naseeb Kaur (complainant), PW-11-Jasbir Singh, PW-12-Kulwant Singh cannot be discarded simply on the ground that they are close relatives of the deceased. Reference can be made to cases **Shyam Babu Vs. State of U.P. 2012(4) R.C.R(Criminal) 963 (SC)** and **Sahabuddin Vs. State of Assam, 2013(1) RCR (Criminal) 817**. As already mentioned, PW-14-Dharam Pal, Naib Tehsildar, Kalanwali, exercising the powers of Executive Magistrate, supervised the exhumation proceedings of the dead body buried in the fields of appellant-Jasbir Singh @ Jassa in pursuance of the disclosure statements made by the appellants. Dharam Pal, Naib Tehsildar, who is a senior revenue officer cannot be presumed to be under the influence of Sub-Inspector of Police. So, there is no reason not to consider PW-14-Dharam Pal, Naib Tehsildar as an independent witness. There is nothing to doubt the presence of PW-14-Dharam Pal, Naib Tehsildar at the spot. He has attested the memo Ex.P-35. No question has been put to this witness by showing the photographs that he was not visible therein. If, he was not visible in the photographs, he was the best person to explain. PW-1-Bhushan Sharma, is the photographer, he has categorically deposed that he has taken the photographs in the presence of Dharam Pal Khokhar, Naib Tehsildar. Even, he has not been cross-examined that Naib Tehsildar was not visible in the photographs. The other prosecution witnesses have also categorically deposed about the presence of PW-14-Dharam Pal, Naib Tehsildar at the spot.

28. The accused-appellants have not alleged any animosity towards the police officials or any kind of their interest and closeness to the deceased. The Hon'ble Supreme Court in case **Rakesh and another**

Vs. State of M.P, (2011) 3 Supreme Court Cases (Cri) 803 has laid down that in the absence of any animosity or any kind of interest and closeness to the deceased the question of not believing the statement of the Investigating Officer does not arise. Similarly in case **Rameshbhai Mohanbhai Koli and others Vs. State of Gujarat, (2011) 3 Supreme Court cases (Cri) 102**, the panch witnesses had turned hostile, The Hon'ble Supreme Court held that there is no ground to reject the evidence even if the same is based on the testimony of the Investigating Officer alone. Same legal position has been reiterated in case **Parmod Kumar Vs. State of NCT of Delhi, 2013 (4) R.C.R.(Criminal) 55(SC)**.

29. Thus, in these circumstances, when the Executive Magistrate has supervised the exhumation proceedings of the dead body at the instance of the accused-appellants, the non-joining of the inhabitants of the village is no ground to discard the prosecution case.

30. The present appellants and their co-accused-Manjit Kaur @ Rani, Gurmeet Kaur @ Seeti and Jagsir Singh @ Seera were made to stand trial for the commission of this offence. The learned trial Court has given the benefit of doubt and acquitted accused-Manjit Kaur @ Rani, Gurmeet Kaur @ Seeti and Jagsir Singh @ Seera of the charges. But, the acquittal of co-accused is no ground to grant any benefit to the present appellants. The Hon'ble Apex Court in case **Rizan and another Vs. State of Chhatisgarh, through the Chief Secretary, Govt. of Chhatisgarh 2003(2) R.C.R.(Criminal) 662** has laid down as under:-

“12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. **Even if major portion of**

evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such case testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See **Nisar Alli v. The State of Uttar Pradesh, AIR (1957) SC 366**). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See **Gurucharan Singh and Am. v. State of Punjab, AIR (1956) SC 460**)."

31. Again in case **Chhitarmal Vs. State of Rajasthan 2003(1) R.C.R.(Criminal) 442**, the Hon'ble Apex Court has laid down that if the benefit of doubt has been given to the co-accused, still the conviction of the remaining accused against whom the case is established can still be recorded on the basis of the statements of the same witnesses.

32. In view of the aforesaid legal position, the acquittal of the co-accused is no ground for giving the same benefit to the appellants.

33. From the statement of PW-12-Kulwant Singh, PW-15 ASI Des Raj, it is established that accused-appellants-Lakhbir Singh @ Bhola has suffered disclosure statement Ex.P-36 and accused-appellant-Jasbir

Singh @ Jassa has suffered the disclosure statement Ex.P-37. It is further

evident from the testimonies of PW-11-Jasbir Singh, PW-14-Dharam Pal, Naib Tehsildar and PW-16-SI Devender Singh, the Investigating Officer of the case that in pursuance of their disclosure statements, the appellants got recovered the dead body of Pakhar Singh buried in the fields of accused-appellant Jasbir Singh. PW-13-Jaswant Singh Patwari Halqa Faggu-I, District Sirsa has prepared the scaled site plan Ex.P-39 and he has deposed that the land falling to killa no. 7 of Rect. No. 15 was the joint Khewat of Karam Singh, the father of appellants with other co-sharers and they were in possession of that portion of the land as co-sharers. Thus, from the aforesaid evidence, it comes out that the dead body of Pakhar Singh was recovered from the fields of appellant-Jasbir Singh @ Jassa in pursuance of the disclosure statement made by appellants, which is clinching evidence to establish the prosecution case. The Hon'ble Apex Court in case **State of Maharashtra Vs. Suresh 2000(1) R.C.R. (Criminal) 149** has laid down as under:-

“26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can Offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

Same ratio of law has been reiterated by the Division Bench

of Hon'ble Delhi High Court in case **Jaipal Vs. State 2012(8) R.C.R. (Criminal) 2301**. Accused-appellants have not given any explanation that how they came to know about the presence of the dead body of Pakhar Singh in their fields. From the statement of PW-9-Dr. Jitender Kumar Jakhar and the postmortem report Ex.P-27, it comes out that there were following injuries on the person of deceased-Pakhar Singh:-

1. A reddish contusion of size 7 x 4 cm present over the anterior lateral aspect of left thigh. On dissection underlying tissues found ecchymosed.
2. A reddish contusion of size 6 x 3 cm present over the lateral aspect of middle one-third of left leg. On dissection: underlying tissues found ecchymosed.
3. A reddish contusion of size 3 x 3 cm present over the medial aspect of left leg, middle one-third.
4. A contusion of size 4 x 3 cm present over the lower part of scrotum. On dissection: underlying tissues found ecchymosed.
5. A contusion of size 11 x 6 cm present over the right side of the chest wall. On further dissection: 3, 4, 7, 8 ribs were found fracture in the mid axillary line.
6. A contusion of size 6 x 3.7 cm present over the left side of chest wall just lateral to the nipple. On further dissection: underlying 2nd, 3rd, 8th, 9th ribs were found fractured.
7. A contusion of size 9 x 5 cm present over the occipital region in mid-line. On dissection: underlying tissues found ecchymosed. On further dissection skull bone showed pericranial infiltration of blood.”

As per the statement of PW-9-Dr. Jitender Kumar Jakhar, the case of death was injuries described above. It establishes that Pakhar Singh has died as a result of injuries mentioned above, which were sufficient to cause death in ordinary course of nature. Once from the statement of PW-10-Naseeb Kaur, it comes out that deceased-Pakhar Singh was abducted by the appellants, they were required to explain as per the provisions of Section 106 of the Indian Evidence Act, 1872 under

what circumstances he suffered so many injuries. But, again there is no explanation about the injuries on the person of deceased-Pakhar Singh from the side of the appellants.

35. The plea raised by learned counsel for the appellants that the disclosure statements made by the appellants were under fear and thus are inadmissible in evidence and the place of burial of the dead body was already known to the police is virtually devoid of merits on careful perusal of the evidence. In their disclosure statements Ex.P-44 and Ex.P-45 respectively, appellant-Lakhbir Singh @ Bhola and Jasbir Singh @ Jassa have disclosed that they have mentioned wrong place of concealment of the weapons and tractor/trolley in their previous disclosure statements Ex.P-36 and Ex.P-37 dated 12.06.2008 due to fear. But, the disclosure statements Ex.P-36 and Ex.P-37 made by them are proved to be true and voluntarily with the recovery of dead body of Pakhar Singh buried in the earth from the place demarcated by them on 12.06.2008 itself i.e. much before the subsequent disclosure statements dated 15.06.2008. The subsequent change in the disclosure statements Ex.P-44 and Ex.P-45 respectively by the appellants was only with respect to the place of concealment of the weapons and tractor/trolley. So, there is no legal defect in the disclosure statements Ex.P-36 and Ex.P-37 made by the appellants on 12.06.2008.

36. PW-15-ASI Des Raj has stated in the cross-examination that burial place was already demarcated and was already in their knowledge, which was later on demarcated by the lady accused. The lady accused namely Gurmeet Kaur @ Seeti and Manjit Kaur @ Rani were arrested by PW-16-SI Devender Singh on 29.06.2008 i.e. after 17 days of the recovery

of the dead body. So, certainly the place of concealment of the dead body which was demarcated by the appellants was already in the knowledge of the police. PW-15-ASI Des Raj has deposed only with context to the lady accused that the burial place was already demarcated and in their knowledge which was later on demarcated by the lady accused. Moreover, they have already been acquitted by the learned trial Court. However, learned counsel for the appellants could not point out any material on record to show that the police was already having knowledge about the place of burial of the dead body of Pakhar Singh before the disclosure statements made by the appellants. So, the only irresistible conclusion which can be drawn is that the accused-appellants have concealed the dead body of Pakhar Singh in their fields after committing his murder.

37. The accused-appellants also had a strong motive for elimination of Pakhar Singh. It is an admitted fact that the parties were having previous enmity. Even, in their statements recorded under Section 313 Cr.P.C, both the accused-appellants have stated that they had previous litigation with the complainant party, which was pending in the Court. Even, on that day, the dispute has taken place between the complainant party and Jagtar Singh, the brother of the appellants and their mother-Baldev Kaur. It is well settled that enmity is a double edged weapon. In the instant case, from the evidence brought on record, it is established that the previous enmity between the parties was a motive for the commission of offence.

38. Thus, keeping in view of our aforesaid discussion and from the evidence brought on record, it is established beyond shadow of reasonable doubt that accused-appellants had abducted deceased-Pakhar

Singh and after killing him, buried his dead body in the fields of appellant-Jasbir Singh @ Jassa in order to cause the evidence of the said crime to disappear in furtherance of their common intention.

39. Thus, we do not find any legal infirmity in the conviction of the appellants recorded by the learned trial Court and the sentence awarded to them.

40. Resultantly, the present appeal has no merits and the same is hereby dismissed.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

February 03, 2017

s.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No