

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

**CRA-D-154-DB of 2005
Date of decision : 1.3.2017**

Sita Devi

.....Appellant

v.

State of Punjab

.....Respondent

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

Present : Mr. G.S. Verma, Advocate and
Ms. G.K. Dulat, Legal Aid counsel for the appellant

Mr. Gaurav Garg Dhuriwala, DAG, Punjab

Mahesh Grover, J. (Oral)

The appellant questions her conviction and consequent sentence awarded to her by the learned Sessions Judge, Ludhiana vide judgment and order dated 15.1.2005.

The FIR was registered on the basis of the statement made by one Gurdev Singh, apprising the police that in the morning at 7.00 a.m. on 23.1.2003, he noticed a dead body lying in his fields, whereupon, he informed the fact to few of his neighbours and then the police, resulting in the registration of FIR, broadly containing this version with accusation and suspicion at none.

The dead body was established to be that of Rajesh Bahadur- husband of the appellant, who was then tried for murder of her husband to result in conviction largely on two aspects taken into consideration by the learned trial Court i.e. (i) recovery of blood stained “thapi” (wooden bat like structure used for washing clothes);(ii)extra judicial confession made before one Harpal Singh.

The dead body as discovered was few yards away from the place

where Rajesh Bahadur was residing with his wife (appellant) and was ostensibly dragged from there to the metaled road and beyond to be pushed in the fields of complainant-Gurdev Singh.

The post-mortem and inquest report on record Ex.PD and Ex.PE, established an injury 'vertex division on the head' and strangulation marks on the neck. PW4 Dr. R.S. Grewal, who testified in Court, attributed the cause of death to high asphyxia on account of strangulation. The forensic report established the presence of human blood on the 'thapi', allegedly recovered from the appellant.

While questioning the conviction and sentence awarded, the learned counsel for the appellant as also the legal aid counsel contended before us that there is a variation in the statements of the complainant and that of the Investigating Officer, which would completely shatter the case of prosecution.

The Investigating Officer, who has been examined as PW8 has testified that the dead body was discovered by him when he was informed of it by PW1 Gurdev Singh at 10.30 at night. He categorically records in his cross examination that he reached at T-Point Jamalpur at 10.00 at night, while Gurdev Singh reached there at 10.30 and he took him to the place of occurrence to reach the spot of discovery at 11.30, where the dead body of Rajesh Bahadur was lying at a distance of only 10 yards from the Mundian Kalan Road. He further testified that the kotha was about one and a half kilometers from the main Chandigarh Road but only 10-15 yards away from the Mundian Kalan Branch Road. The dead body was lying only 50 yards from this kotha. The Investigating Officer had searched the kotha of the accused on the same day. No blood stains were noticed by him in the kotha and even though he stated that blood stains were discovered about 8-10 feet from this kotha, which continued

to the place, where the dead body was lying, including the metaled link road but he failed to collect the blood stains. There is also evidence by this officer that a dog squad was brought into service. There is nothing to conclude that the body was dragged from the place of occurrence to the place of recovery. No drag marks have been mentioned by the Investigating Officer.

Contrasted against this testimony is the prosecution story that the appellant-a young woman in her mid twenty's tied up the hands and legs of the victim to inflict a blow on his head and then strangulate him with a cord of the petticoat.

As noticed above, there are only two pieces of evidence that have been taken against the appellant; one is, extra judicial confession and the second is the recovery of blood stained 'thapi' at her instance.

It is a settled law that extra judicial confession is not an inspiring piece of evidence to be relied upon, unless it is shown that it is made voluntarily before a person, who enjoys the confidence of the accused. We do not find any evidence that Harpal Singh was a man of confidence of the appellant and neither was he a man of prominence in the village. We would, thus, have little hesitation to discard this piece of evidence and hold it as un-reliable.

The entire prosecution story, as per the FIR registered at the behest of complainant Gurdev Singh, is the discovery of the dead body at 7.00 in the morning, which is completely belied by the testimony of the Investigating Officer, who specifically records that he visited the scene of occurrence at 10.00 in night to be joined by complainant Gurdev Singh at 10.30 in night to reach the place where the dead body was lying, at 11.30. This singular fact which is a strong deviation cast a serious doubt on the prosecution story, which is to be considered with other discrepancies and un-questioned facts, such as the

whereabouts of the appellant from 22/23.1.2003 till the date of her arrest i.e. 1.2.2003. It is pertinent to note that even after the dead body was discovered on the intervening night of 22/23.1.2003, as per the testimony of the Investigating Officer, yet no attempt was made to join the appellant with the proceedings. Even though the body had been identified by the complainant to be that of Rajesh Bahadur-her husband. No explanation is forthcoming in his testimony in this regard. So much so, dead body was not even got identified from the appellant and the process was undertaken by Harpal Singh. Similarly, the Investigating Officer even though testifying the presence of blood stains on the metaled road, suggesting either the dragging of the body from the place of occurrence to the place of recovery or indicating the road to be the place of occurrence, has failed to either collect the blood or even record an explanation of either of the two eventualities and also leaves un-explained the possibility/probability of a young woman in mid twenty's and her ability to drag a fully grown body of able bodied man, aged 27 years, to a distance of 10-15 yards single handedly. There is also no material collected to verify that the deceased's hands and legs had been tied up before he was strangulated. All these facts taken cumulatively together cast a sufficient doubt in the prosecution version, which benefit necessarily has to go to the appellant to result in her acquittal.

The appeal is allowed and the appellant is acquitted of the charges against her.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

1.3.2017
Ashwani