

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1379-DB of 2013
Date of decision : 8.2.2017

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Wasu

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sultan Singh Lamba, Advocate as amicus curiae
for the appellant

Mr. S.S. Dhaliwal, Additional Advocate General,
Punjab

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H. S. Madaan, J.

This appeal has been preferred against judgment dated 28.9.2011 passed by the Court of Additional Sessions Judge, Ludhiana, vide which he had convicted accused Wasu for offence under Section 302 IPC, sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- or in default of payment of fine to further undergo rigorous imprisonment for three months.

The accused – convict, who is appellant before this Court, prays that the appeal be accepted and impugned judgment of his conviction be set aside and he be acquitted of the charge framed

against him.

Briefly stated, the prosecution story, as it emanated from report under Section 173 Cr.P.C., the documents attached therewith, as well as during trial, is that on 14.11.2007, SI Surinder Mohan, (hereinafter referred as 'Investigating Officer/IO') SHO, P.S. Division No.2, Ludhiana, while heading the police party was present at Vishkarma Chowk, Ludhiana, where complainant Ajay son of Krishan Nishad, resident of Kasria, P.S. Lohria, District Fauzabad (UP) at present Rishi Dhaba, Mohalla Preet Nagar, P.S. Division No.2, Ludhiana, aged about 22 years, accompanied by Narinder Sharma, owner of Rishi Dhaba, came across the police party. Complainant Ajay got his statement Exhibit PW 10/A recorded with SI Surinder Mohan, in which he stated that his younger brother Hari Chand was also working at Rishi Dhaba and on 13.11.2007 at about 6.00 P.M., since Hari Chand was unwell, he went to the roof top of servant quarter for taking rest and at about 1.30 A.M. (after midnight) when the complainant was free from his work and after taking meals, went to the roof top, he did not find Hari Chand there. As such complainant accompanied by Prem Shanker went to the roof of the hall and he found that Hari Chand was lying there besmeared with blood. Complainant and Prem Shanker brought down Hari Chand to basement and then observed that neck of Hari Chand had been cut with a sharp edged weapon and Hari Chand had expired. Complainant then accordingly, informed his employer Narinder Sharma. Then Prem Shanker was left near the dead body and complainant alongwith Narinder Sharma was going to the Police

Station Division No.2, Ludhiana, to report regarding the incident, on the way at Vishkarma Chowk, they came across the police party and complainant Ajay got his statement recorded with the Investigating Officer/IO. The statement was signed by the complainant in Hindi. Such signatures of the complainant were attested by SI Surinder Mohan. Thereafter the Investigating Officer/IO appended his endorsement Exhibit PW 10/A below such statement, sending ruqa to Police Station through Constable Jaspal Singh, on the basis of which formal FIR Exhibit PW4/A was recorded at Police Station by ASI Shamsher Singh. Thereafter, the police party accompanied by the complainant and Narinder Kumar went to the spot. The Investigating Officer/IO carried out inquest proceedings with respect to the dead body of Hari Chand, who had died an unnatural death. He had prepared a report in that regard as Exhibit PW 10/C. The Investigating Officer prepared an application Exhibit PW 5/C and handed over the same to HC Hakam Singh with a direction to get the post mortem examination conducted on the dead body of Hari Chand from Civil Hospital, Ludhiana. He prepared rough site plan of place of incident as Exhibit PW 10/D and PW 10/D1. The Investigating Officer/IO summoned a photographer to the spot and got the photographs clicked at the spot. He recorded statements of prosecution witnesses. He took into possession the blood stained earth from the spot, preparing a sealed parcel thereof and sealed with seal impression 'SM' and said parcel was taken into possession vide memo Exhibit PW 6/A. This memo was attested by ASI Jagjit Singh. HC Hakam Singh, who was deputed to get the post mortem

examination conducted on dead body, after getting the needful done, had produced clothes of deceased before the Investigating Officer/IO, which were taken into possession vide recovery memo Exhibit PW 9/A, attested by HC Hakam Singh.

On the next day i.e. on 15.11.2007, accused Wasu was nominated in this case, since Wasu had told his employer Narinder Kumar and made an extra judicial confession before him that due to some earlier quarrel between him and deceased, he had murdered Hari Chand by cutting his neck with a sharp knife on 13.11.2007 at about 6.00 P.M. and Narinder Kumar should produce him before police and to save him from torture. As such Narinder Kumar took accused Wasu to police, coming across the police party at Vishkarma Chowk and handed over accused Wasu to SI Surinder Mohan, informing SI Surinder Mohan about confession made by the accused regarding murder before him. Accused Wasu was accordingly arrested in this case. While arresting the accused, a memo Exhibit PW 6/B was prepared. Personal search of the accused was conducted, which resulted in recovery of Rs.100/-. A memo in that regard Exhibit PW 6/C was prepared. Intimation regarding arrest of accused was given and memo Exhibit PW 6/D in that regard came into being.

Such accused, while being interrogated had suffered a disclosure statement before SI Surinder Mohan that he had kept concealed Karad (Iron knife) underneath a generator in the Coal Godown, in servant quarter of the Dhaba regarding which he had exclusive knowledge and he could get the same recovered. That statement was reduced into writing. It was thumb marked by the

accused and attested by ASI Jagjit Singh and ASI Avtar Singh. Such statement has been exhibited as Exhibit PW 6/E. Thereafter, accused Wasu while being in police custody lead the police party to the disclosed place and got the iron Karad recovered from there . That Karad was found to be blood stained. The Investigating Officer/IO prepared rough sketch of the recovered Karad, as Exhibit PW 6/G. Karad was taken into possession vide recovery memo Exhibit PW 6/F. The Investigating Officer/IO prepared rough site plan of place of recovery as Exhibit PW 10/E.

On 27.11.2007, the Investigating Officer/IO took into possession photographs and negatives Exhibits P1 to P10, vide memo Exhibit PW 10/F, witnessed by Rajesh Puri @ Raju, photographer.

Report from FSL, Punjab, Chandigarh was received which has been exhibited as Exhibit PW 10/G. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Illaqa Magistrate, Ludhiana.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions Judge, Ludhiana, from where it was entrusted to the Court of Additional Sessions Judge, Ludhiana.

After making consideration, charge for offence under Section 302 IPC was framed against the accused, to which he pleaded

not guilty and claimed trial.

During the course of prosecution evidence, the prosecution examined as much as, 12 witnesses as per detail below.

PW-1 Narinder Kumar deposed regarding murder of his employee Hari Chand at his Rishi Dhaba situated at Deep Nagar, Ludhiana, on the night of 13.11.2017; accused Wasu being also in his employment; on 15.11.2007 Wasu appearing before him and making an extra judicial confession as regards his having committed murder of Hari Chand on 13.11.2007 at about 6.00 P.M. and requesting that he be produced before the police to save him from police torture and this witness accordingly, taking him to the police and handing him over to SI Surinder Mohan.

PW-2 Ajay Nishad, brother of deceased Hari Chand, deposed as regards murder of Hari Chand and his reporting the matter to the police by making statement Exhibit PW 2/A.

PW-3 Prem Shanker supported the prosecution story.

PW-4 HC Gurmeet Singh, who on 14.11.2007, while posted at P.S. Division No.2, had taken special reports, so given to him by ASI Shamsher Singh, to the Illaqa Magistrate and higher police officials, deposed in that regard.

PW-5 Dr. Jaspreet Singh Gill deposed that on 14.11.2007 at 1.30 P.M. he alongwith Dr. Raminder Kaur and Dr. J.S. Sallan conducted post mortem on the dead body of Hans Raj and found the following injuries :-

“1. There is an incised wound elliptical shape 5 inch
x 3 inch on anterior side of neck underlying muscles

vessels trachea cut. There is cut on underlying vertebra.

2. There is contusion 1-1/2 inch x 1/2 inch, 1 inch x 1/2 inch, 3/4 inch x 1/2 inch on anterolateral aspect of left upper arm.

3. There is an abrasion 1/4 inch x 1/4 inch on left thenar area of left hand.”

The cause of death in their opinion was due to hemorrhage and shock as a result of injury to great vessels and trachea which was sufficient to cause death in ordinary course of nature.

PW-6 ASI Jagjit Singh, who was member of the police party headed by SI Surinder Mohan on 14.11.2007, deposed regarding what had transpired in his presence on that date. He further deposed regarding arrest of accused on 15.11.2007; accused during interrogation suffering a disclosure statement and in pursuance thereof getting a Karad Exhibit P1 recovered from his possession, which has been seized by the Investigating Officer/IO.

PW-7 Balbir Singh, Building Surveyor Approved MC, Ludhiana, stated that on 27.11.2007 he was called by police officials of Police Station Division No.2 at Rishi Dhaba, near Gill Chowk. He accordingly went there and inspected the place of occurrence preparing scaled site plan Exhibit PW 7/A.

PW-8 HC Jaswinder Singh, a formal witness, has tendered in his evidence affidavit Exhibit PW 8/A.

PW-9 HC Hakam Singh, who on 14.11.2007 was member of the police party headed by SI Surinder Mohan, deposed regarding the

police party going to the spot; the Investigating Officer/IO carrying out various proceedings and then he being deputed to get post mortem examination conducted on dead body of deceased Hari Chand and accordingly, getting the needful done. He further deposed that after post mortem examination dead body of Hari Chand was handed over to his family members and doctor concerned had given to him one sealed parcel containing one pant, shirt, underwear and banyan of the deceased sealed with seal impression 'LMCH', which he had handed over to SI Surinder Mohan.

PW-10 Inspector Surinder Mohan, Investigating Officer/IO of this case deposed regarding investigation conducted by him.

PW-11 HC Harjinderpal Singh , a formal witness tendered in evidence his affidavit Exhibit PW 11/A.

PW-12 Rajesh Puri @ Raju, having avocation of photographer and proprietor of Honey Studio, Dhuri Line, Azad Nagar, Ludhiana, stated that on 14.11.2007 he was called at Rishi Dhaba by Inspector Surinder Mohan, SHO Police Station Division No.2, Ludhiana, where he took photographs of deceased Hari Chand and thereafter had handed over photographs Exhibits P-1 to P5 alongwith negatives to the police.

With that the prosecution evidence got concluded.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating evidence appearing against the accused was put to him, but he denied the allegations and contended that he is innocent and has been involved in this case at the instance of hotel owner Narinder Kumar and complainant; that police had

arrested him from the hotel premises on 14.11.2007 and thereafter implicated him in this false case; that police had called all the workers of the Dhaba to Police Station on 14.11.2007, after interrogation at the instance of hotel owner all the workers were let off by the police except him and he being the less useful person for the hotel owner has been implicated in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard Mr. Sultan Singh Lamba, Advocate as Amicus Curiae for the appellant and Mr. S.S. Dhaliwal, Additional Advocate General, Punjab for the State, besides going through the record and we are of the view that the impugned judgment of conviction and sentence is not sustainable and is bound to be set aside by way of acceptance of appeal.

The case in hand is based upon circumstantial evidence, since no eyewitness of the incident is available. The law is well settled that if it is a case based upon circumstantial evidence, the chain of events must be complete and even if one vital link in the chain is missing, then conviction of the accused cannot be based. Furthermore, in such type of cases, strong motive must be established. Applying this yardstick, we find that prosecution has been unable to complete the chain of events and many vital links in the chain are missing. Furthermore, the prosecution has not been able to establish a strong motive for the incident. It has to be kept in mind

that in the FIR the accused is not named as a suspect. The entire case of the prosecution is based upon two grounds, firstly the accused having suffered extra judicial confession, regarding he having committed murder of Hari Chand on 13.11.2007 at 6.00 P.M. before Narinder Kumar, owner of Dhaba and second ground being the accused making statement under Section 27 of the Evidence Act, regarding his having concealed Karad (iron knife) in the residential building of workers of Rishi Dhaba, about which only he knew and in pursuance of the disclosure statement, a Karad (iron knife) was recovered, which was found to be blood stained.

As far as the accused making extra judicial confession before PW-1 Narinder Kumar on 15.11.2007 and then Narinder Kumar alongwith some other persons handing him over to SI Surinder Mohan, at Vishkarma Chowk, Ludhiana, the same is not proved satisfactorily on the record. Although PW-1 Narinder Kumar had deposed in that regard in his examination-in-chief but then Inspector Surinder Mohan, Investigating Officer/IO, appearing as PW-10, did not utter even a single word in that regard, rather he stated that on 15.11.2007, he had nominated the accused Wasu and arrested him in this case. The memo of arrest of accused Exhibit PW 6/B, memo of personal search of the accused Exhibit PW 6/C do not bear signatures of Narinder Kumar. Under normal circumstances, if Narinder Kumar, had brought accused Wasu and produced him before the Investigating Officer/IO, then his signatures should have been there on such memos, but here it is not so. Therefore, accused having made extra judicial confession before Narinder Kumar PW-1

on 15.11.2007 comes out to be doubtful.

As a matter of fact, the manner in which the accused was arrested, has been given differently by different witnesses, in as much as, PW-1 Narinder Kumar stated that after accused Wasu had made extra judicial confession before him on 15.11.2007, he alongwith some other persons had taken the accused to Police Station, but on the way they came across police party at Vishkarma Chowk, where he handed over the accused to the Investigating Officer/IO and other police officials and told about confession of the accused regarding murder, whereas PW-6 ASI Jagjit Singh has stated that on 15.11.2007 the accused was arrested vide arrest memo Exhibit PW 6/B. In his cross examination, he stated that accused was arrested from servant room of vehra constructed on the back side of the Dhaba. PW-10 Inspector Surinder Mohan simply stated that on 15.11.2007, he had nominated the accused Wasu and arrested him in this case. Therefore, such different manner of arrest of the accused also puts a question mark over the credibility of the prosecution story.

Coming to recovery of blood stained Karad from possession of accused, though it forms a strong circumstance against the accused, in as much as, according to report (Exhibit P 10/G) from FSL, Punjab, the Karad was found to be stained with human blood, but then that by itself is not enough to reach the conclusion that it was accused who had committed murder of the deceased. Furthermore, the place of recovery is one which is accessible to all. Then strong motive for the incident is not proved on the file. No

previous enmity between accused and deceased comes out to be there. From the evidence adduced by the prosecution, the prosecution had been unable to prove its charge against the accused beyond a shadow of reasonable doubt, but the trial Court by misappraisal of evidence and wrong interpretation of law, erroneously came to the conclusion otherwise. Such judgment of conviction and sentence of accused, calls for being set aside and appeal being accepted.

Therefore, we accept the appeal, set aside the impugned judgment of conviction and sentence passed against accused Wasu and he is acquitted of the charge framed against him. He be set at liberty, if not required in any other case.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

8.2.2017

chugh	Whether speaking / reasoned	Yes/ No
	Whether reportable	Yes/ No