

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

CRA-D-No.1031-DB OF 2009
DATE OF DECISION : 10th DECEMBER, 2018

Baba Mohan Dass

.... Appellant

Versus

State of Haryana

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

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Present : Mr. Atul Partaap Dhankhar, Advocate for
Mr. Bijender Dhankhar, Advocate for the appellant.

Mr. Tanisha Peshawaria, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 14.11.2009 passed by Additional Sessions Judge, Fast Track Court, Gurgaon in Sessions Case No.41 of 2008/2009, by which appellant-Baba Mohan Dass was convicted for offences punishable under Sections 302 and 201 IPC and sentenced to undergo rigorous imprisonment for life and fine, the present appeal was filed by him.

FACTS:

2. In brief the case of the prosecution is that on 17.06.2008 Maha Singh, Railway Trackman made a report to Shri Ganga Ram the then Station Superintendent that on that day he was on duty as Gang No.11, Pataudi Road, Jatola. At about 6.00 am he was checking the relevant track and at about 7.30am when he was coming back he saw smoke coming out of the room located at unmanned gate No.C-45 with foul smell. He went there to find the door of the room closed and there

was a broken grill of one of the window of the room from where he saw that a dead body of a person was lying in the room and that was set on fire. He lodged report to Station Superintendent who then lodged the report with the Police Station which brought a dog squad. The police found that both the legs of the deceased were tied with a piece of niwar and someone killed the said person and tried to destroy the evidence. A telephone diary was recovered from the pocket of the pants of the deceased. Four or five railway tickets, identity card issued by UP Government, Driving Licence etc. were recovered and the name of the deceased was Ganga Sharan Sharma, BDPO, Fatehpur Sikri Agra. Thereafter, the relatives of the deceased were informed and body was identified. The prosecution case further is that the accused Baba Mohan Dass was produced by Ram Avtar before whom the appellant accused had made extra-judicial confession. After conducting the post-mortem etc. the investigation was undertaken and the challan was filed. The trial commenced in which the prosecution examined as many as 18 witnesses. The trial court having heard the evidence, convicted the appellant as stated above. Hence this appeal.

ARGUMENTS:

3. In support of the appeal the learned counsel for the appellant submitted that the trial court convicted the appellant only on surmises and conjectures without there being evidence on record. The trial court also ignored some material pieces of evidence which clearly revealed that the case was of benefit of doubt. He then submitted that the telephone diary that was seized, contained the name of Avdhesh with telephone number 9897907690 and in fact the police had arrested Avdhesh and thereafter

left him under pressure and arrested the present appellant. The counsel for the appellant then submitted that the alleged last seen evidence could not at all be treated as last seen evidence as per the settled legal position about it. The appellant was a government servant and it cannot be believed that he would travel with the appellant at number of places without any protest and resistance. The deceased was well built person as against the appellant who was aged about 70 to 72 years. The prosecution collected some hairs from the spot but did not conduct any DNA test even with respect to the appellant. Insofar as the extra judicial confession is concerned, the same is clearly unbelievable and trial court committed error in convicting the appellant. Learned counsel for the appellant therefore prayed for acquittal of the appellant.

4. *Per contra*, learned counsel for the State supported the reasons given in the judgment. The counsel for the State submits that wife of the deceased clearly stated that the deceased had gone with the present appellant and that he was mesmerized by the appellant. There is further evidence on record to show that the appellant was paid an amount of ₹1.5 lacs through her Jeth Ram Avtar and Kedar for getting employment of their son Ajit. There is thus last seen evidence which has been rightly believed by the trial court. The learned counsel for the State, therefore, submitted that the prosecution proved its case beyond reasonable doubt and therefore the appeal deserves to be dismissed.

CONSIDERATION:

5. We have heard learned counsel for the rival parties and we have also perused the entire record so also the evidence tendered before the trial court. At the outset we find that the wife of the deceased PW-7-

Surajmukhi deposed that the appellant-Baba Mohan Dass used to visit her house along with one Umesh. The appellant mesmerized her husband and promised to manage employment to her son Ajit in Bank and he collected an amount of ₹1.5 lac in the presence of her Jeth Ram Avtar and Kedar. Her husband waited for about one year as per promise for employment for Ajit but that was not done and therefore her husband started demanding back the amount he had paid to him. On 10.06.2008, appellant-Baba Mohan Dass had taken her husband for the purpose of arranging the meeting with bank authorities. On 16.06.2008 her husband talked to her on telephone at her house. Her husband told her that appellant-Baba Mohan Dass was befooling them in connection with the employment of their son and he will return on the next day i.e. 17.06.2008. On 17.06.2008 she received a message of murder of her husband in Haryana. This is the only evidence regarding last seen theory. The dead body was found on 17.06.2008 i.e. almost after 7 days after the appellant was seen with the deceased. The requirement of law that the period of last seen and finding of dead body should be nearer is absent in the present case. At any rate, it is seen that the deceased was a well built person and a Government servant with full maturity and when he made a telephone call on 16.06.2008 to his wife that he was being befooled, there is no explanation as to how he continued to remain with the appellant till his dead body was found. It is then seen that her husband had made a telephone call from New Delhi. Then the case of the prosecution is that the room in which the dead body was found was near the railway station Pataudi i.e. in Haryana and at some distance from the railway station. The theory of the prosecution that the deceased had accompanied appellant-

Baba Mohan Dass up to Delhi and thereafter from Delhi to the place where the dead body was found without any resistance or protest, does not appear to be probable. It is thus nowhere clear as to whether the deceased was with the appellant-Baba Mohan Dass even when he had made a phone call to his wife on 16.06.2008. The prosecution did not remove the suspicion as to whether even on the date of making the phone call the deceased was with the appellant. The witness wife does not claim that her husband told her that the appellant was with him or that he was going to travel with the appellant in Haryana. It is, therefore, difficult to link up the evidence about the company of the deceased with the appellant either on 16.06.2008 or on 17.06.2008 and therefore, it is highly improbable that the deceased would meekly accompany the appellant.

6. It is then significant to note that the investigator had collected some hairs near the dead body but then the said hairs were not sent for DNA test as to whether they are of the appellant or not, which could have been a good evidence. On the contrary, the telephone diary contains the names of some other persons and not of the appellant at all.

7. The next evidence that is relied on by the prosecution is of extrajudicial confession. In this behalf it is significant to note that PW-7 Surajmukhi admitted in her cross-examination that one Ambesh Kumar son of Ram Snehi was arrested by the police regarding the murder of her husband but then the police did not proceed against him.

8. The next piece of evidence relied upon by the police is about extrajudicial confession of PW-16-Ram Avtar. He stated in his statement as under:

Page 301 “...xxx...xxx... Baba Mohan Dass after committing murder reached in the village and met me and the respectable and confessed his guilt that he has committed the murder of Ganga Saran as the deceased was pressing hard for the return of the amount which was given to him for the employment of deceased’s son. He asked us to save him. At that time myself, Ram Sewak, Ex.Pardhan and other respectable of the village were also present. Mohan Dass accused made written confession at my asking and the same was written by me and signed by me with other respectable of the village. This written document was also signed by the accused. The accused was brought at P.P. GRP Gurgaon and same was produced before the SHO. We have told all the facts to the SHO regarding committing of murder of Ganga Saran by the accused. After hearing us SHO interrogated accused Mohan Dass and our statement was corroborated by the accused before the SHO. Baba Mohan Dass suffered disclosure statement which is Ex.PW11/A.”

9. It is significant to note that the alleged extrajudicial confession was made before this witness and Ram Sewak, Ex-Pardhan of the village but then Ram Sewak, Ex Pardhan who could be the person of some status in the village was not examined by the prosecution. That

apart the witness has stated that Mohan Dass accused made a written confession which was signed by the accused as well as other persons in the village and the written document was then handed over to the police regarding extrajudicial confession. However, the prosecution has not produced the said written document of extrajudicial confession anywhere on record nor it has explanation as to why the document has been withheld from the Court. In the wake of the said documentary evidence as to what it contained not being showed to the court, we think such an extrajudicial confession and the evidence thereof, as stated above, is wholly unreliable. On the contrary, adverse inference can be drawn against the prosecution for not producing the said document. The prosecution ultimately relied only on the disclosure statement without any discovery. As to the discovery the prosecution relied on the finding of photocopies of the documents at some distance from the room where the dead body was found by PW-13-Ranjit Singh. The finding of these documents is totally unreliable as the alleged black colour bag which was stated to have been recovered, was neither shown to PW-7 Surajmukhi the wife of the deceased or PW-14-Ajit son of the deceased. PW-11 Parma Nand, Head Constable No.808 however deposed that the bag was having stamp of "enterpriser Agra Limited" as against the evidence of PW-13-Ranjit Singh that a black colour bag was having stamp of "Diamond Insurance Consultancy Service Ltd., Bajaj Allianz" written thereon. This is a material discrepancy. It thus clearly appears that this recovery of bag and documents was planted one.

10. We are satisfied that no conviction can be based on such type of evidence. In the result we find that benefit of doubt is required to be

extended to the accused in the peculiar facts of the case discussed above.

In the result we make the following order:

ORDER

- (i) Criminal Appeal CRA-D-No.1031-DB OF 2009, is allowed.
- (ii) The impugned judgment and order dated order dated 14.11.2009 passed by Additional Sessions Judge, Fast Track Court, Gurgaon in Sessions Case No.41 of 2008/2009 convicting the appellant-Baba Mohan Dass and sentencing him to undergo rigorous imprisonment for life and to pay a fine of ₹5,000/-, for the offence punishable under Sections 302 and to undergo rigorous imprisonment for 5 years and to pay a fine of ₹2,000/-, for offence punishable under Section 201 IPC, is set aside.
- (iii) The appellant-Baba Mohan Dass is acquitted from the charge framed against him. He be released forthwith from the jail, if his custody is not required in connection with any other case.

(A. B. CHAUDHARI)
JUDGE

10TH DECEMBER, 2018
'raj'

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>