

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA No. D-642-DB of 2010 (O&M)  
Date of decision: 14.05.2018

Sukhvir Singh @ Bantu

.... Appellant

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI.  
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. K.S. Saini, Advocate for the appellant.  
Mr. H.S. Sullar, DAG, Punjab.

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**B.S. Walia, J.**

[1] Appeal has been filed against the judgment and order passed by Shri G.S. Dhillon, Additional Sessions Judge (Ad hoc), Fast Track Court, Rupnagar in Session Case No.6 of 2007 decided on 23.04.2010 in case FIR No.52 of 23.10.2006 under Sections 302, 377 and 201 Indian Penal Code ( " hereinafter referred to as IPC") registered at Police Station Nurpur Bedi, convicting the appellant for the offence punishable under Section 302 IPC and sentencing him to undergo life imprisonment, besides, to pay a fine of Rs.10,000/- and in default thereof to undergo rigorous imprisonment for six months ; rigorous imprisonment for a period of five years besides to pay a fine of Rs.5,000/- and in default thereof to undergo rigorous imprisonment for three months for the offence punishable under Section 377 IPC ; rigorous imprisonment for a period of three years, besides to pay a fine of Rs.1000/- and in default thereof to undergo rigorous imprisonment for one month for

[2] Learned counsel contends that the appellant was falsely implicated by the police and the same was evident from the fact that the prosecution had completely failed to prove the charges. There were material contradictions in the prosecution story and the statements of the witnesses. Link evidence was completely missing and the appellant had been implicated on the basis of extra-judicial confession. Moreover, there was a delay in registering FIR which was unexplained. Besides, there were material contradictions in the statements of the prosecution witnesses etc, there was no eye-witness of the occurrence and the appellant had been convicted on the basis of circumstantial evidence. Prayer is for acquittal of the appellant by setting aside the judgment of conviction and order of sentence passed by the learned trial Court.

[3] Brief facts of the case leading to the filing of the present appeal as per prosecution story are that the complainant Ranvir Singh met SI Sital Singh and other police officials near Bus Stand of village Manku Majra and got recorded his statement that he had two sons and a daughter and on 21.10.2006 his elder son was not at home while his younger son Amit Kumar who was present at home on account of Diwali Festival went out at about 9.00 p.m. to purchase fire crackers from a shop but did not return. Believing that he must have gone to their old house, the complainant on the next morning made enquiries whereupon his brother Avtar Singh and Satish Kumar told him that his son had come to them at night at 9.00 p.m. and gone back at about 9.30 p.m. On learning about the same, the complainant started searching for his son but could not locate him. Thereafter, on 23.10.2006 missing report of his son Amit Kumar was lodged with the police. On the same day, at 3.45 p.m. while at home, he learnt about the recovery of dead body of his son from Shamlat land adjoining the vacant fields of Amar Nath

of village Manku Majra. Thereupon, he along with his father Mangal Singh, Devi Singh, Sarpanch of village and other persons reached said place and found the dead body of his son lying there along with his black coloured 'chappals'. There were injury marks on his neck, mouth and nose. On recording of the statement of the complainant, a 'ruqa' (memo) was sent to the Police Station on the basis of which FIR No. 52 of 23.10.2006 was registered at Police Station Nurpur Bedi against the appellant/accused for the offences punishable under Sections 302, 377 and 201 IPC. Investigation in the case was carried out. Spot was inspected. Site plan of the place of occurrence was prepared. Inquest report was prepared and the dead body of Amit Kumar sent to the Civil Hospital, Anandpur Sahib through ASI Karnail Singh for getting post-mortem conducted on the dead body. Statements of witnesses were recorded. Thereafter, accused Sukhvir Singh @ Bantu (appellant) was arrested in the case on 25.10.2006. Blood stained grass was lifted and separate parcel of the same was prepared. Likewise, separate parcel of 'chappals' of the deceased was also prepared and during interrogation, the appellant/accused suffered disclosure statement and got recovered his underwear as well as silver locket of the deceased. The appellant was got medically examined and on completion of necessary investigation and other formalities, challan against him was presented in the Court and case being triable exclusively by the Court of Session was committed to the Court of Sessions.

[4] On finding prima facie case, charge under Sections 377, 302 and 201 IPC was framed against the appellant/accused to which he pleaded not guilty and claimed trial. On the basis of the evidence led before the trial Court, judgment of conviction as referred to above was recorded, therefore

the appellant/accused has come up in appeal.

[5] PW-1, Jaswinder Singh, Photographer proved the photographs Ex. P2 to Ex.P11 as well as negatives Ex.P12 to Ex.P22.

[6] PW-2, Tarsem Chand deposed that on 21.10.2006 he had gone to the fields of Amar Nath to answer the call of nature at about 10.30 p.m. and while sitting in the fields, he saw a person having something in his arms throw the same near the heaps and thereafter, put 'sarkandas' on the same. PW2 further deposed that when he came back and was passing near the heaps, he saw the appellant/accused namely Sukhvir Singh @ Bantu son of Rajpal resident of village Manku Majra who was under the influence of liquor whereafter, he went to his house. Later the dead body of Amit Kumar was found from the place in question and he was convinced that the accused was the person who had thrown the dead body of Amit Kumar there. His statement was recorded by the Investigating Officer.

[7] PW-3, Ranbir Singh, complainant, father of the deceased fully corroborated and supported the prosecution version and proved his complaint Ex.PB and further deposed that his statement Ex.PC was recorded by the prosecution.

[8] PW-4, Devi Singh deposed that he has last seen the appellant with Amit Kumar son of Ranbir Singh going towards the Bara of the appellant/accused.

[9] PW-5, Avtar Singh stated that on 23.10.2006 in his presence police took into possession blood stained straw as also 'Chappals' which were lying near the dead body and proved the recovery memos Ex.PW-5/A and Ex.PW-5/B as also 'Chappals' as Ex.P23.

[10] PW-6, Dr. Mukesh Sondhi deposed that he along with other members of Board of Doctors on 24.10.2006 conducted the post-mortem on

the dead body of Amit Kumar. He proved the post mortem report

Ex.PW-6/B. On receipt of report of Chemical Examiner (Ex.PW-6/A), the Board of Doctors gave their opinion Ex.PW-6/D that as per Chemical Examiner's report, cause of death in the case was 'Asphyxia' as a result of throttling. He further deposed that possibility of sexual intercourse through anus could not be ruled out.

[11] PW-7, Satish Kumar stated that on 27.10.2016 accused Sukhvir Singh @ Bantu (appellant) was taken by the police party to his 'Bara' and he got recovered his underwear of cream colour stained with blood and semen and one silver chain upon which 'AK' was engraved and it contained locket which were taken into possession vide memo Ex.PW-7/A which had his signatures as well as signatures of HC Mollu Ram. He also proved the silver chain along with locket as Ex.P24 and under wear Ex.P25.

[12] PW-8, HC Balbir Kumar tendered his affidavit Ex.PW-8/A while PW-9, Constable Sukhdev tendered his affidavit Ex.PW-9/A in order to prove the link evidence and deposed that parcels were sent for chemical examination.

[13] PW-10, Mohinder Singh deposed that he was running Tea/Halwai shop at village Manku Majra and on 21.10.2006 at about 8.30 p.m. Sukhvir Singh @ Bantu (appellant) along with one person came to his shop. He was having a bottle of liquor and demanded a glass and 'namkeen' from him and he (PW-10) handed over the same to him. Then both of them went away after consuming liquor.

[14] PW-11, HC Mollu Ram proved the arrest memo Ex.PW-11/A, memo of sending information Ex.PW-11/B and search memo Ex.PW-11/C. He further deposed that during interrogation, the appellant/accused suffered disclosure statement Ex.PW-11/D on the basis of which he got recovered

separately sealed and were taken into possession vide recovery memo Ex.PW-7/A.

[15] PW-12, Dr. Shiv Kumar, Medical Officer has medico-legally examined appellant/accused Sukhvir Singh @ Bantu and proved his report Ex.PW-12/A while PW-13, SI Dharam Pal partly investigated the case and got prepared scaled site plan of the place of occurrence.

[16] PW-14, Gurcharan Singh stated that the accused had confessed his guilt to him and he proved the extra-judicial confession made by the appellant/accused. He deposed that on the next day of Diwali of the year 2006, the appellant/accused came to his residence at about 7.00 a.m. and disclosed that on the night of Diwali, he committed sexual intercourse with Amit Kumar of Manku Majra under the influence of liquor and that when the child said that he would tell his family members about the occurrence and identified him, he murdered the child by strangulation whereafter, he threw the dead body of the child into the heaps of the village. He (PW-14) further deposed that he (appellant/accused) told him to produce him before the police and his statement was also recorded by the Investigating Officer.

[17] PW-15, Satwant Singh, who was a formal witness, prepared and proved the scale map Ex.PW-15/A while PW-17 HC Karam Singh tendered his affidavit as Ex.PW-17/A. PW-18, ASI Karnail Singh got the post-mortem conducted on the dead body of Amit Kumar at Civil Hospital, Anandpur Sahib. Thereafter, evidences were closed.

[18] PW-16, SI Sital Singh, Investigating Officer of the case, who recorded the statement of the complainant also proved various memos prepared during investigation. He also proved disclosure statement suffered by the accused and the recoveries on the basis of disclosure statement, besides, investigation of the case.

[19] After closing the evidence, statement of the appellant/accused was recorded under Section 313 CrPC, wherein all the incriminating circumstances appearing against the accused were put to him but he denied the case of the prosecution and pleaded false implication. Learned State counsel on the other hand contended that the appellant had been rightly convicted and sentenced for the offences he was charged with.

[20] We have considered the submissions of learned counsel for the appellant as well as the State.

[21] As regards the plea of the FIR being delayed, no doubt the deceased went missing on the night of 21.10.2006 but the complainant did not feel alarmed on the said night thinking that his son had gone to their old house. It was only in the morning when he met his brother Avtar Singh, that he learnt that his son Amit Kumar had gone back on 21.10.2006 at 9.30 p.m, whereafter search was made for him and eventually he learnt about finding of his sons dead body on 23.10.2006.

[22] As regards the plea that PW-2 alleged eye-witness and PW-4 who had last seen the deceased had not proved the offence under Section 377 IPC, that prosecution had failed to establish the chain of circumstances which inevitably connected the appellant/accused with crime, link evidence was missing, affidavits Ex.PW-8/A and Ex.PW-9/A tendered by PW-8 and PW-9 respectively to prove the link evidence were defective and that extra-judicial confession was not sufficient to prove the offence, last seen theory was not attracted, it needs mention that all the aforementioned pleas are without any merit as the prosecution has proved the commission of offence beyond reasonable doubt.

[23] PW-2, Tarsem Chand deposed that on 21.10.2006 at about 10.30 p.m. he had gone to the fields of Amar Nath to answer the call of

nature and when he was sitting in the fields, he saw a person who was having something in his both arms throw the same near the heaps and thereafter, put 'sarkandas' on the same. PW-2 further deposed that when he came back and was going near the heaps, he saw the appellant/accused namely Sukhvir Singh @ Bantu who was under the influence of liquor, whereafter, he went back to his house and later the dead body of Amit Kumar was found at said place whereupon he was convinced that appellant/accused was the person who had thrown the dead body of Amit Kumar at said place. PW 2 also got his statement recorded with the Investigating Officer.

[24] PW-4, Devi Singh corroborated the testimony of PW-2, Tarsem Chand by deposing that on 21.10.2006, he closed his shop at about 8.00 p.m. on account of Diwali Festival and started towards his house whereupon he saw Sukhvir Singh @ Bantu (appellant) along with Amit Kumar son of Ranbir Singh going towards 'Bara' of the appellant/accused. PW-4 further deposed that he remained at the Bus Stand where the children were playing with crackers and after about one hour, the appellant/accused came back from the side of his 'Bara' looking very perplexed. PW-2's wife namely Shakuntla Devi is the Sarpanch of the village.

[25] PW-3 Ranbir Singh, complainant, father of the deceased Amit Kumar proved the link evidence by stating that his brother Avtar Singh told him that on 21.10.2006, Amit Kumar was in his house at night at 9.00 p.m. and went back at about 9.30 p.m. PW-3 further deposed that on 23.10.2006, he reported the matter to the police of Police Station Nurpur Bedi (Ex.PB), regarding his son Amit Kumar being missing and on that very day, in the evening at about 3.45 p.m. when he was present in his house, he came to

know that the dead body of his son was lying in the fields of Amar Nath near the heaps with his face lying downward pointing towards the earth.

[26] The testimony of PW-2, PW-3 and PW-4 stands corroborated by PW-6 Dr. Mukesh Sondhi who deposed in his statement that the possibility of sexual intercourse by the appellant with the deceased through anus could not be ruled out. He also deposed regarding injury No.9 i.e. “abrasion size 0.4 cm x 0.1 cm present at 4 O’ Clock position 0.3 cm from anus in the peri-anal area away from the anus”. Apparently, the appellant/accused committed sexual intercourse of the deceased through anus and thereafter, murdered him.

[27] PW-7, Satish Kumar proved the recovery memo of underwear stained with blood and semen by deposing that on 27.10.2006 he was present with the police party in the investigation of the case at village Manku Majra whereupon accused Sukhvir Singh @ Bantu (appellant) was taken by the police party to his ‘Bara’ and he got recovered his underwear of cream colour stained with blood and semen and one silver chain upon which ‘AK’ was engraved and it contained locket. Separate parcels were sealed with the seals and separate sample seal was prepared and the seal after use was handed over to him (PW-7) and both the parcels were taken into possession vide memo Ex.PW-7/A which bore the signatures of PW-7 as well as signatures of HC Mollu Ram.

[28] Likewise, PW-8, HC Balbir Kumar tendered his affidavit Ex.PW-8/A while PW-9, Constable Sukhdev tendered his affidavit Ex.PW-9/A in order to prove the link evidence and they deposed that parcels were sent for chemical examination.

[29] The chain of circumstances was also proved by PW-10,

village Manku Majra and on 21.10.2006, appellant/accused -Sukhvir Singh @ Bantu came to his shop at about 5.00/6.00 p.m. and told him that he would purchase sweets for Diwali from his shop and went away. Thereafter, at about 8.30 p.m. Sukhvir Singh @ Bantu (appellant) along with one person came to his shop with a bottle of liquor and demanded a glass and 'namkeen' from him whereupon, he (PW-10) handed over the same to him. Then both of them went away after consuming liquor.

[30] Likewise, PW-11, HC Mollu Ram identified the appellant/accused as also of his being arrested vide arrest memo Ex.PW-11/A and memo of sending information as Ex.PW-11/B. He also proved search memo Ex.PW-11/C while PW-12, Dr. Shiv Kumar, Medical Officer who examined appellant/accused Sukhvir Singh @ Bantu deposed that no fresh injury was detected but there was nothing to suggest that he was incapable of sexual intercourse. He also proved his report Ex.PW-12/A.

[31] The circumstantial evidence is further pitted against the appellant/accused as deposed by PW-14 Gurcharan Singh to whom the accused confessed his guilt. PW-14 proved the extra-judicial confession made by the appellant/accused by deposing that he was President of B.S.P. Halqa Anandpur Sahib and was running a 'Dhaba' in the name and style of Pehalwan Dhaba at Ropar-Nurpur Bedi Road and he knew accused Sukhvir Singh as he usually came to his 'Dhaba' for taking meals etc. and that on the day after Diwali of 2006, the appellant/accused came to his residence at about 7.00 a.m. and disclosed that on the night of Diwali, he had committed sexual intercourse with a child Amit Kumar of Manku Majra under the influence of liquor and on the child identifying him and telling him that he would tell his family members about the occurrence, he murdered the child by strangulating him whereafter, he threw the dead body of the child into the

heaps of the village. He (PW-14) further deposed that the appellant/accused told him to produce him before the police and his statement was also recorded by the Investigating Officer.

The statement of PW-14, Gurcharan Singh not only proves the extra-judicial confession made by the appellant/accused but also makes it clear of the appellant/accused having committed sexual intercourse with Amit Kumar and thereafter, having murdered him after which he confessed his crime before PW-14, Gurcharan Singh. Besides, appellant/accused suffered a disclosure statement Ex.PW-11/D regarding concealment of silver locket and his under-wear stained with blood and semen in the cattle shed owned by none other than the appellant/accused.

[32] The aforementioned facts of the case go to show that the prosecution has proved the chain of circumstances which is sufficient in the ordinary course of nature to prove the commission of offences punishable under Sections 377, 302 and 201 IPC having been committed by the appellant/accused. PW-2 and PW-4 are the main witnesses who have fully supported the prosecution story while PW-14 has proved the extra-judicial confession made by the appellant/accused. Accordingly, there is enough evidence on the file to prove the commission of offences under Sections 377, 302 and 201 IPC. The prosecution has fully proved the recovery of articles belonging to the deceased on the statement of the appellant/accused and the recovery is also strongly connected with the crime committed by the appellant/accused. In the circumstances, sexual intercourse committed by the accused with the deceased also stands established, besides, the deceased was last seen with the accused as per PW-4. Thus, the facts of the case go to show beyond an iota of doubt the complicity of the appellant/accused in the commission of the offences with which he was charged.

[33] Accordingly, finding no merit in the appeal, the same is dismissed. The judgment of conviction and the order of sentence dated 23.04.2010 passed by the learned trial Court are upheld.

(A.B. Chaudhari)  
Judge

(B.S. Walia)  
Judge

14.05.2018  
amit

- 1. Whether speaking/reasoned : Yes/No.
- 2. Whether reportable : Yes/No.