

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-A-2261-MA of 2017

Date of Decision : January 12, 2018

State of Haryana Applicant
Vs.
Anoop alias Bangla and others Respondents

CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Kapil Aggarwal, Addl. A.G., Haryana
for the applicant – State.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – the Cr.P.C.), the State of Haryana seeks leave to appeal against the judgment dated 02.08.2016 passed by the Additional Sessions Judge, Bhiwani (for short – the trial court) acquitting the respondents of the charges framed against them under Sections 302/201/34 of the Indian Penal Code (for short – the IPC) by extending to them the benefit of doubt.

The case of the prosecution, in brief, is that on 26.09.2014, a telephonic message was received by the police from Sandeep, Sarpanch of Village Haluwas, through which information was given that a dead body of an unknown person was found in a well. Acting upon such information, a police party was dispatched to the spot, where, as per the received

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information, a dead body was found in a well. The same was taken out. Photographs of the dead body as well as the place of occurrence were taken. On search, two papers were found from the pocket of the deceased, on one of which, name of Vinod and mobile number of one Naresh was mentioned. When contacted, Naresh informed the police that Vinod was his maternal uncle's son. In the meanwhile, Rajesh, Dharambir and other persons of the village reached the spot. The dead body was identified by Rajesh to be of his elder brother Vinod.

Rajesh then moved an application to the police to the effect that they were three brothers who were all married. His elder brother was Vinod who was married to Anju and out of the wedlock, they had a daughter named Tannu aged 13 years. Vinod being a drunkard, for the last about two years, his wife along with their daughter, has left his company to live with her parents at Bhiwani. About 4/5 days earlier, Vinod had also gone to Bhiwani. At about 10:00 AM, Sandeep Sarpanch had informed Rajesh about a dead body of a person in the well and on receiving such information, he along with others, reached the spot. He feared that his brother had been killed by some unknown persons, who, after killing him, had thrown his body into the well.

On the basis of application given by Rajesh, the FIR was registered. During investigation, a rough site plan of the place of occurrence was prepared. On 28.09.2014, Rajesh got recorded a supplementary statement which was to the effect that on 27.09.2014, his uncle Desraj had told him that on 20.09.2014, Anoop @ Bangla, Sunil,

Sunder and Vinod (deceased) were present at the house of Anoop and were installing a hand-pump there. Thereafter, they went to the field of Vinod to have liquor. At about 02:30/03:00 AM, Desraj saw Anoop and Sunder on a motorcycle in the middle of the village. According to him, at that time, Anoop and Sunder might be taking Vinod's dead body to be thrown into the well.

The accused were arrested. On completion of investigation, report under Section 173 Cr.P.C. was filed. After charging the accused for the offences under Sections 302/201/34 IPC and on their pleading not guilty, they were put to trial.

The trial court, after sifting the evidence which had come on record and hearing the counsel for the parties, concluded that the charges framed against the respondents were not proved beyond reasonable doubt and by extending them the benefit of doubt, ordered their acquittal. It is such order of acquittal which is the subject matter of challenge in the present proceedings.

Learned State counsel submitted that the trial court erred in acquitting the respondents as the State had proved its case beyond reasonable doubt with regard to the charges framed against the respondents under Sections 302/201/34 IPC. It was submitted that though the prosecution's case was based on circumstantial evidence, the State has proved beyond reasonable doubt the guilt of the respondents by producing last seen evidence; disclosure statement of the respondent Anoop, resulting in the recovery of the blood-stained axe, which was used in the crime;

extra-judicial confession made by the accused before PW-16 Mukesh; identification of the place of occurrence by the respondents and motive behind the murder. It was thus submitted that the respondents were clearly guilty and liable to be convicted for the offences under Sections 302/201/34 IPC.

The above submissions made by learned State counsel have been considered but the same do not warrant a favourable consideration.

It is not disputed that there is no direct evidence against the respondents and that the entire case of the prosecution is based on circumstantial evidence. It is the settled law that when the prosecution's case is based on circumstantial evidence, what is required to be proved by the prosecution is the complete chain of circumstances without leaving any conclusion consistent with the innocence of the accused. It must be shown that in all human probability, the act, with which the accused is charged with, has been done by him. The circumstances must be or should be established and should exclude every possible hypothesis except the one to be proved.

The material witness for the prosecution is PW-6 Desraj who made a statement to the police under Section 161 Cr.P.C. that in the evening of 20.09.2014, he had seen the deceased in the company of the respondents. However, when the evidence given by this witness is scrutinized, it is found unworthy of reliance.

PW-6 Desraj, who is real uncle of the deceased, in his statement made by him under Section 161 Cr.P.C., had stated that in the

evening of 20.09.2014, he had seen the deceased with respondents Anoop @ Bangla and Sunil. However, when he appeared before the trial court, he contradicted himself to state that the two persons with the deceased were not Anoop and Sunil but were Anoop and Sunder. He further stated before the trial court that this fact was not disclosed by him to any person prior to 28.09.2014 since he came to the village only on 28.09.2014. This stand of his was contradicted by PW-16 Mukesh, who in his testimony admitted that on 26.09.2014, when the dead body of the deceased was recovered from the well, PW-6 Desraj was present there. Still further, it is highly improbable that Desraj saw the deceased with the accused on 20.09.2014 but did not disclose such fact to the members of his own family till 28.09.2014. Even otherwise, there is a gap of six days between the last seen evidence and the discovery of the body which remains unexplained.

So far as the extra-judicial confession allegedly made by the respondent Anoop before PW-16 Mukesh is concerned, the same is also not believable as according to PW-16 Mukesh, respondent Anoop, on 03.10.2014, made an extra-judicial confession. However, prior to such date i.e. on 28.09.2014, the police party already knew the name of the accused. Thus, there was no occasion on 03.10.2014 for Anoop to make an extra-judicial confession before PW-16 Mukesh. Further, while appearing before the trial court, PW-16 Mukesh admitted that he had never made a statement to the police which stands contradicted by the stand taken by the police that on 03.10.2014, PW-16 Mukesh made a statement to the police with regard to the extra-judicial confession made by respondent Anoop before him.

Thus, the statement of PW-16 Mukesh would not inspire confidence.

The story of the prosecution with regard to recovery of axe, in pursuance of the disclosure statement made by respondent Anoop, is also unbelievable as the axe was recovered from an abandoned open room in a field which had easy access to the general public. Further, as per the police, the recovered axe was not smeared with blood, whereas as per report of the Forensic Science Laboratory (for short – FSL) (Ex.P-A), the axe sent to the FSL was blood stained. Still further, in the FSL report, it is not found mentioned whether the alleged blood on the axe was of a human or of an animal. DNA test of the blood allegedly found on the axe with the blood of the deceased was also not got conducted by the prosecution.

A perusal of the record further reveals that no evidence whatsoever was led by the prosecution to show that as to what was the motive with the respondents to commit such a heinous crime as admittedly, there was no prior enmity between the deceased and the respondents.

In view of the above, the present application is found devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

January 12, 2018
monika

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*

