

984

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1111-DB-2016 (O/M)

Reserved on : 21.2.2019

Date of decision : 28.2.2019

Kennu and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Grewal, Advocate,
for appellants.

Mr. S.P.S. Tinna, Additional A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

:-

:-

KULDIP SINGH J.

Appellants Kennu and Darshan Singh have filed this appeal against judgment of conviction dated 6.10.2016 and order of sentence dated 7.10.2016, passed by learned Sessions Judge, Ropar, vide which they were held guilty of offence under Section 302 IPC read with Section 34 IPC and sentenced to undergo imprisonment for life and fine of Rs. 20,000/- each, in default of payment of fine, to undergo further rigorous imprisonment for one year each. At the same time, co-accused Rekha Rani was acquitted.

Brief facts of the case are that Harjinder Singh alias Rajinder

Singh (deceased), son of Gurmail Singh (complainant), who was handicapped by left leg, aged about 30 years, and was working as a Sweeper with Lilly Motel, Rupnagar, was son of Gurmail Singh (complainant). On 28.8.2015, at about 7.00 AM, Gurmail Singh asked his daughter-in-law Rekha Rani about whereabouts of his son Harjinder Singh alias Rajinder Singh. Rekha Rani told him that previous evening at about 8.00 PM, Harjinder Singh alias Rajinder Singh had returned home from his duty and went back saying that he was going to his work place again because night party was there in the Motel and he would not come back at night. Harjinder Singh alias Rajinder Singh had not returned back. Therefore, Gurmail Singh and his daughter-in-law Rekha Rani started towards Rupnagar by boarding a bus. When they reached near Mansuha bridge, then Rekha Rani pointed out that she had seen parked bicycle by the side of road which belongs to them. Thereafter, Gurmail Singh and Rekha Rani disembarked from the bus and went towards place of bicycle, but it was found that bicycle does not belong to deceased. However, on the other side of road, on kachha path, on the right side of bank of river, one chappal was lying which belonged to Harjinder Singh alias Rajinder Singh. Therefore, they stepped ahead and saw dead body of Harjinder Singh alias Rajinder lying in a pool of blood in the bushes by the left side of bank of river. There were head injuries on his person. According to Gurmail Singh, some unknown persons have killed his son. He then informed the Sarpanch of the village, namely, Gian Singh who came present at the place of occurrence. He was left near the dead body and Gurmail Singh was going to inform the police when he met police party headed by Inspector Ravinder Pal Singh (PW12) who recorded his statement (Ex.PF) and after making endorsement at 3.00 PM, he sent same to police station where formal FIR

(Ex. PW12/B) was registered. The police then proceeded to the place of occurrence. Site plan (Ex.PW12/C) of place of occurrence was prepared. The inquest report (Ex.PW12/D) was prepared. Chappal of deceased and handle of sword lying near the dead body were also taken into possession through different recovery memos Ex.PW11/B and Ex.PW11/C. The post mortem of dead body was got conducted.

On the same day i.e. 28.8.2015, Gurmeet Singh (PW5) made a statement before the police that he is working as a Sweeper in railway factory, Chanalon, for making spare parts of train. On 28.8.2015, after being relieved from duty work, he came to Ropar on his motorcycle for personal work. After doing some work, he started for village Balsanda, District Ropar. When he reached at the liquor vend of village Bande Mahlan, it was about 10.00 PM and he stopped at liquor vend. In the meanwhile, Kennu alongwith co villager Darshan Singh reached liquor vend on the motorcycle. He knew Kennu earlier as Kennu is grandson of his maternal uncle Gurmail Singh. According to Gurmeet Singh, they were perplexed and their clothes were stained with blood and after making some conversation with him, they left.

On 30.8.2015, both accused approached Gian Singh, Sarpanch of village Jhallian Khurd, P.S. Sri Chamkaur Sahib, District Ropar (PW1) where they made extra judicial confession stating that they have committed the murder of Harjinder Singh alias Rajinder Singh and that they should be produced before the police. Accordingly Gian Singh produced them before the police, which arrested them. Their personal search was carried out regarding which different memos were prepared.

On 30.8.2015, both accused were interrogated. On interrogation, accused Darshan Singh made disclosure statement

(Ex.PW11/F), in which he stated that after using the sword, he has kept concealed the sword in the area of Nadi (river) in the bushes and clothes stained with blood worn during the incident were kept concealed in his house and he can get same recovered. Similarly, on the same day, Kennu also suffered disclosure statement that he has kept concealed motorcycle used during the incident in a room of his house and that he has kept concealed clothes worn during incident under the bed in the room, to which he only knew and he can get the same recovered. His disclosure statement (Ex.PW11/G) was recorded. In pursuance to disclosure statement, accused Darshan Singh got recovered blood stained sword alongwith its sheath from the disclosed place near the river. The sword was taken into possession. Similarly, he also got recovered his blood stained clothes i.e. T. Shirt, colour sky blue, lower of black colour. Accused Kennu also got recovered motorcycle and blood stained clothes i.e. check shirt of white mehroon colour and black pant. All these articles were taken into possession through different recovery memos. These were sent to FSL for analysis. As per the report of FSL (Ex.PX), the sword and clothes of deceased and accused were found to be stained with human blood. However, the result regarding blood group was inconclusive. Since during investigation, it came out that both said accused had committed the murder of deceased at the instance of Rekha Rani. Rekha Rani was also arrested. After completion of investigation, challan was presented against accused.

In support of its case, prosecution examined Gian Singh, Sarpanch of village Jhallian Khurd (PW1), Gurmail Singh (complainant/PW2), Swaran Singh (PW3), Dr. Lovkesh Kumar (PW4), Gurmeet Singh (PW5), Dinesh Kumar (PW6), Harnek Singh (PW7), HC Shinder Pal (PW8), HC Sanjay Joshi (PW9), C. Kuldeep Singh (PW10),

ASI Raj Kumar (PW11), IO/ASI Ravinder Pal Singh (PW12) proved some

documents and closed the prosecution evidence.

When examined under Section 313 Cr.P.C., co accused Rekha Rani claimed that she does not know Kennu and Darshan Singh and she has been falsely involved after the death of her husband. Accused Kennu and Darshan Singh also denied as incorrect evidence led against them and claimed that they have been falsely implicated. They had not suffered any disclosure statement.

In defence, accused examined Karam Singh, Draftsman (DW1) and S.P. Jain, Nodal Officer, Bharti Airtel Limited (DW2).

After hearing the prosecution, learned defence counsel and going through evidence, the learned Sessions Judge, Rupnagar, acquitted co accused Rekha Rani giving her benefit of doubt. However, accused Kennu and Darshan Singh were convicted and sentenced as aforesaid, against which they have come up in appeal.

We have heard learned counsel for appellants, learned State counsel and have also carefully gone through case file.

Admittedly, in this case, there is no eye witness of occurrence and case is based on circumstantial evidence. Firstly, it is to be noticed that murder was committed in a brutal manner. The assailants ensured that deceased does not survive. This will be demonstrated from the following injuries found on the person of deceased at the time of post mortem by Dr. Lovkesh Kumar (PW4) :-

- '1. A brownish coloured bruise present over front of neck at the level of thyroid cartilage 1 cm in breadth, left limb extending horizontally 10 cms laterally from midline upto 7 cm below left ear lobule and right limb extending 8 cm from midline horizontally placed upto 8 cm below the right ear lobule. On exploration subcutaneous hemorrhages spots

present below ligature mark but hyoid bone is intact

2. Multile incised wounds present over scalp and forehead as below :-

(a) incised wound 8.5x2 cm over right side of forehead starting from lateral end of right eye brow going towards mid line with tailing of wound on upper end underlying frontal bone fracture present, clotted blood present.

(b) incised wound 6.5 x 0.5 cm over midline of skull starting from anterior hair line going upwards with tailing present at upper end, bone deep clotted blood present.

(c) Incised wound 4 cm x 0.5 cm lying transversally over scalp connecting upper end of injury (a) with lower end of injury (b), bone deep, clotted blood present.

(d) Incised wound 7 x 0.5 cm over left side of forehead starting 1.5 cm above the medial 1/3rd of left eye brow going upward with tailing, bone deep, with fracture under lying frontal bone, clotted blood present.

(e) Incised wound 5 cm x 0.3 cm present over scalp skin deep vertically lying between injury No. (a) and (b).

(f) Four incised wounds over left parietal region, lying parallel to each other ranging in size 3.5 cm x 0.5 cm to 5 cm x 0.5 cm, all bone deep, clotted blood present.

(g) Incised wound 4 x .05 cm over right parietal eminence region lying along cornal direction, bone deep, blood present.

(h) Incised wound 3.5 x 0.5 cm lying obliquely over right parietal region, bone deep, clotted blood present.

3. Incised wound over upper lip 2 cm x 0.5 cm at junction of right 1/4th and left 3/4th. 2nd incisor and 1st canine on right side are missing from upper jaw.

4. 4 cm x 0.3 cm incised wound over left cheek skin deep.

5. Incised wound 1 x 0.5 cm over dorsum of left hand on ulnar side, skin deep, clotted blood present.

6. Multiple skin deep incised wounds present over right fore arm over dorsal aspect with tailing towards medial side, ranging in size 3 cm x 0.5 cm to 1 cm to 0.5 cm.

7. Two stab wounds present over lower end of sternum upper wound 2 cm x 1 cm and lower 3 cm x 0.5 cm on

exploration wounds piercing sternum only, no underlying organ injury present.

8. Multiple abrasions present over lower part of chest and lamber region of abdominal wall on left side.

9. 2 cm x 1 cm abrasion over left leg shin in middle region.'

The cause of death was combined effect of head injury and strangulation which were ante mortem in nature. Therefore, the assailants not only caused several incised wounds and stab wounds, but also strangled the deceased to ensure that he dies.

Gurmail Singh (complainant) has not seen the occurrence, but he states that he saw dead body and informed Sarpanch of village Gian Singh (PW1).

Crucial in this case is testimony of Gurmeet Singh (PW5), who saw accused after sometime near the liquor vend of village Bande Mahlan, District Ropar, around 9.30 PM. At that time, accused Kennu and Darshan Singh came there on a motorcycle. Their clothes were stained with blood and Gurmeet Singh when asked them about blood, they told that they had cut the chicken. It is to be noted that accused and complainant party as well as witness Gurmeet Singh belong to lower strata of society. Gurmeet Singh had informed the police on the day of registration of FIR about he having seen accused Darshan and Kennu with blood stained clothes. Accused Kennu was related to deceased being his nephew. Gurmail Singh, father of deceased is otherwise maternal uncle of Gurmeet Singh (PW5). He is also related to accused Kennu, who is grandson of his maternal uncle, namely, Gurmail Singh (complainant).

The learned counsel for appellants has vehemently argued that statement of Gurmeet Singh (PW5) has been introduced to connect accused with crime. It has been argued that Gurmeet Singh had admitted that he

was having mobile phone No. 9779742167 and that he had no occasion to go to liquor vend, village Bande Mahlan, District Ropar and seen the accused. His call details were also got proved from S.P. Jain, Nodal Officer, Bharti Airtel Limited (DW2).

This aspect was dealt with by trial Court which found that call detail record and location of Gurmeet Singh (PW5) was only upto 8.00 PM on the said day, whereas he saw accused at 9:30 PM. Therefore, witness could travel from the area of Mohali to the area of Ropar after making last call at 8.00 PM from Mohali. Therefore, call detail record will not prove that Gurmeet Singh was not present at the liquor vend of village Bande Mahlan at 9.30 PM.

It has been further argued that there was another way to go to village Balsanda as proved by Karam Singh, Draftsman (DW1). However, Gurmeet Singh has specifically stated that he was to buy the liquor that is why he went to village Bande Mahlan. This is not unusual. Accused Kennu was relation of Gurmeet Singh and, therefore, when he passed that way, Gurmeet Singh will recognize him and it is natural for Kennu to stop at least for some time. Therefore, statement of Gurmeet Singh that he saw both accused with blood stained clothes cannot be brushed aside being made up story.

Next is extra judicial confession made by accused before Gian Singh (PW1), Sarpanch of village Jhallian Khurd. According to Gian Singh, both accused came to him on 30.8.2015 and jointly told him that they have committed the crime and that they should be produced before the police.

The learned counsel for appellants has argued that both accused belong to village Kotla Nihang, which is at a distance of 10/15 kilometers

from the village Jhallian Khurd. Though Gian Singh is resident of village Jhallian Khurd, but there is no occasion for accused to go to Gian Singh and make extra judicial confession before him. The extra judicial confession is joint which is not dependable.

The learned counsel for appellants has relied upon authority of Apex Court in Surinder Kumar Versus State of Punjab (1999) 1 RCR (Criminal) 164 to press that joint extra judicial confession made by accused is not to be relied upon.

The perusal of arrest memos of accused (Ex.PA and Ex.PB) show that Gian Singh, Sarpanch of village Jhallian Khurd, had signed as informer when accused were arrested, vide said memos on 30.8.2015. This goes to show that Gian Singh, Sarpanch of village Jhallian Khurd, was present when accused were arrested. Naturally, accused might have said something about their involvement in the crime. Therefore, even if the statement of Gian Singh may not be admissible qua joint extra confessional statement made by accused, but it is admissible to the extent that accused told them about their involvement in the crime. This is sufficient to corroborate the prosecution case.

Another circumstance is that the clothes of both accused were found to be stained with human blood. These clothes were recovered by police on 30.8.2015 i.e. 2 days after the crime and these were recovered at their instance from their houses. The accused have not explained as to how their clothes were stained with human blood. Under Section 106 of Evidence Act, these were special facts which were within exclusive knowledge of accused and they were to explain it. However, no explanation is coming as to how their clothes i.e. T. shirt, shirt, lower and pant were found stained with human blood. Further, at the instance of

Darshan Singh, blood stained sword with sheath was recovered. The handle of sword was recovered from the spot. The learned Sessions Judge, Rupnagar, during the trial, undertook the exercise whether handle fits in the sword. It was found by the Court that handle fits in the sword which was recovered at the instance of accused Darshan Singh. Accused have also not explained as to how sword used in the crime was within their exclusive knowledge. It further comes out that accused Kennu was using mobile No. 9855817543, standing in the name of his father Joseph Masih. Deceased Harjinder Singh alias Rajinder Singh was using mobile No. 9463637849. The call details records of said two mobile numbers (Ex.PK and Ex.PL) shows that there was continuous conversation between deceased and accused Kennu before the death. Accused Kennu has not explained as to why he remained continuously in touch with deceased Harjinder Singh alias Rajinder Singh upto the time of his death through mobile conversation.

The learned counsel for appellants has vehemently argued that prosecution story qua Rekha Rani having illicit relations with accused Kennu has been disbelieved. Therefore, story qua accused Kennu and Darshan Singh is also to be disbelieved.

We are of the view that trial Court after examining evidence doubted the role of Rekha Rani in the crime and, therefore, she was acquitted by giving benefit of doubt. However, this does not mean that involvement of accused Darshan Singh and Kennu is also to be doubted. There is sufficient evidence against appellants to prove the prosecution case. The chain of circumstances is complete and nowhere the chain is broken.

The learned counsel for appellants has further argued that no finger prints were taken from the handle of sword.

However, we are of the view that it is not necessary that handle of sword may have the finger prints. In any case, the handle fitted in the sword, recovered at the instance of accused Darshan Singh alongwith its sheath. It appears that when so many brutal injuries were given to deceased, probably the handle broke from the blade. There is no reason for complainant to falsely involve his near relation Kennu and his friend Darshan Singh in the crime. Gian Singh, Sarpanch (PW1) is also not related to complainant and apparently, he acted independently being responsible person of village Jhallian Khurd.

From the foregoing discussion, we come to the conclusion that there is no illegality or infirmity in the findings recorded by learned Sessions Judge, Rupnagar. We do not find any merit in the present appeal. Same is accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

28.2.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No