

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.201

CRA-D-1036-DB-2017 (O&M)
Date of Decision : 07.11.2019

Satnam Singh @ Sattu

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. G.K. Mann, Advocate
for the appellant.

Mr. H.S. Sullar, D.A.G., Punjab.

AJAY TEWARI, J. (ORAL)

1. This appeal has been filed against the conviction of the appellant in case FIR No.155 dated 11.09.2012, registered under Sections 302, 365, 387 Indian Penal Code, 1860 Police Station City Kotkapura, vide judgment dated 29.09.2017, passed by the Ld. Sessions Judge, Faridkot and against the sentence awarded by the Ld. Sessions Judge vide order dated 29.09.2017 whereby the appellant has been awarded the sentence of rigorous imprisonment for life and to pay a fine of Rs.10,000/- for an offence under Section 302 IPC and in default whereof, to further undergo rigorous imprisonment for a period of four months. The appellant has further been awarded the sentence of rigorous imprisonment for a period of three years and also to pay a fine of Rs.2000/- for an offence under Section 365 IPC and in default whereof, to

further undergo rigorous imprisonment for a period of two months. The appellant has further been awarded the sentence of rigorous imprisonment for a period of three years and also to pay a fine of Rs.2000/- for an offence under Section 387 IPC and in default whereof, to further undergo rigorous imprisonment for a period of two months. The appellant has further been awarded the sentence of rigorous imprisonment for a period of three years and also to pay a fine of Rs.2000/- for an offence under Section 201 IPC and in default whereof, to further undergo rigorous imprisonment for a period of two months. All the sentences have been ordered to run concurrently.

2. Brief facts of the case are that on 11.09.2012 at about 1 PM, the complainant i.e. Dr. Harnarain Singh lodged a missing persons report wherein he stated that his young son Husanpreet Singh, who was aged about 11 years of age, was playing outside his shop at about 7.20 PM on the previous evening (10.09.2012). After sometime when he did not come home the family instituted a search but were unable to find him and that is why he had lodged the missing persons report on 11.09.2012 in which he also expressed an apprehension that his son may have been kidnapped by somebody. The case was registered under Section 365 IPC. On 12.09.2012, the dead body of the child was discovered which was identified by the complainant and that time he made a supplementary statement in which he informed the police that on previous day i.e. 11.09.2012 he received a ransom call from the telephone bearing No.01639 251871. The caller informed the complainant that his son was in his custody and asked the complainant to make arrangement of Rs.1 Lakh for the release of his son. The caller further said that the

complainant would be informed in the evening as to where the ransom amount was to be kept. Then at about 7.00 PM, a phone call was received on his mobile from mobile phone No.99154 56260 thereby directing him to wrap the ransom amount of Rs.1 Lakh in a piece of cloth of red colour and throw the same from the Railway bridge towards the Railway Station at about 10.00 PM at night. After sometime the complainant received another phone call from the mobile No.90234 55053, whereby he was told not to place ransom near the bridge and to place the ransom amount on the turning of Jyoti Model School on Moga Road at the kiosk of the tea vender Bhagwan Dass. Thereafter, another phone call was received from the same mobile phone and he was told to pick up the ransom amount from the tea kiosk and to place the same near the rear tyre of the trolley standing in the street and he did so but nobody came to pick up the amount. Thereafter, the complainant sent a SMS from his mobile phone to the aforesaid mobile phone bearing No.90234 55053 verifying from the kidnapper as to whether he had received the ransom amount. The kidnapper thereafter rang up to inform the complainant that he would pick up the amount. When the complainant asked the kidnapper to send his son back home, the reply he got was that he (the kidnapper) would send the boy in his own way. The complainant also informed the police that the voice of the kidnapper appeared to be of Satnam Singh @ Sattu, who had done wood work in their house. On this statement, the police added Sections 302 & 387 IPC.

3. In the course of the trial, as many as 27 prosecution witnesses were examined. The accused-appellant was examined under Section 313 Cr.P.C. in the course of which they took the plea of being

falsely implicated in the offence alleged and made a statement that they were innocent.

4. In defence, the appellant examined two witnesses. Thereafter, at the conclusion of the trial the learned trial Court, on consideration of the evidence and material on record, passed the impugned judgment and order convicting and sentencing the appellant as mentioned above.

5. We have gone through and considered the judgment and order under challenge and the evidence of the prosecution witnesses apart from hearing the learned counsel for the appellant and the learned Deputy Advocate General, Punjab. The important witnesses being PW2, PW3, PW5, their testimony would require a close scrutiny.

6. On 13.09.2012, the appellant was produced by PW2 Mahant Garib Dass, who was the Head of Jodh Shaheed Beri Wala Dera, before the police. He stated that the appellant Satnam Singh used to visit his Dera in routine. On 13.09.2012, the appellant came to him in the Dera and made an extra judicial confession that on the evening of 10.09.2012 he had kidnapped the son of the complainant and took him to the canal minor via Nayian Wali Basti and then committed unnatural intercourse with the child and thereafter strangled him and thrown him in the canal minor.

7. On 13.09.2012, PW5 Narinder Singh deposed that on the evening of 10.09.2012, at about 7.30 PM, he was standing with his friend at Pheru Mal Chowk, Kotkapura, there he saw the appellant riding motorcycle bearing registration No.PB-60-3999 and that Husanpreet

Singh was pillion riding with him. The next morning PW5 went for work to Zira. He further deposed that on 13.09.2012, he came to know that Husanpreet Singh had been abducted and then murdered and that his body had been found in the canal minor. PW5 further deposed that since he had seen Satnam Singh alongwith Husanpreet Singh on 10.09.2012, therefore, he was sure that the child had been abducted by Satnam Singh and thereafter murdered.

8. On 18th September, PW3 Amit Kumar also appeared before the police and stated that he had also seen the deceased with the appellant on a motorcycle. He further explained that on 11.09.2012 he went to Panchkula and returned to Kotkapura on 18.09.2012 and only then he came to know of the tragedy and he informed the police.

9. During the evidence, apart from the complainant's statement that he suspected the appellant and the extra-judicial confession made by the appellant before PW2 and other witnesses, the post-mortem report of the deceased were also produced. As per the post-mortem report there were bruises on the neck of the deceased; there were abrasions around the anal orifice and the cause of death was Asphyxia due to drowning. The FSL report also confirmed the presence of traces of aluminum phosphide/phosphine compound pesticide in viscera and the presence spermatozoa in anal swab.

10. The trial Court having convicted the appellant on the basis of aforesaid evidence, the present appeal has been filed.

11. Learned counsel for the appellant has primarily argued that in this case of blind murder, the circumstantial evidence do not point

towards conclusive guilt of the appellant. As per her, PW2 had stated that the appellant confessed to him that he had killed the child and then thrown him into the canal. However, the cause of death was not strangulation but drowning. She has also pointed the incongruous presence of aluminum phosphide/phosphine compound pesticide in viscera of the deceased. She has drawn the attention of the Court to that part of the deposition of PW2 wherein he had stated that he acquainted the appellant only by face but in defence the call record were called wherein 100 of calls were exchanged between them. She has also drawn the attention of the Court to the emergence of the last seen evidence after delay. She has further stated that actually the appellant was falsely implicated at the instance of PW2 Mahant Garib Dass. Further she has stated that it was very strange that extra-judicial confession had been made in the Dera where admittedly many people were present. Further as per her, in his cross-examination the complainant was specifically asked whether Mahant Garib Dass and 3 or 4 other persons had accompanied him at the time when the body was identified but he did not deny the same and rather replied that he did not remember. She has further stated that even the telephones from which the ransom calls were made to the complainant were not owned by the appellant.

12. In sum and substance, the argument of the learned counsel for the appellant is that the conviction in this case could not have been based on the circumstances which have emerged.

13. On the other hand, the learned Deputy Advocate General has argued that the testimony of the complainant was completely natural as he had no motive to implicate him. Regarding the delay in the emergence of

the last seen evidence, the explanation given by PW5 Narinder Singh was very natural viz. he saw the child on 10.09.2012; did not think much at that time; went to his place of work next morning and immediately returned after he heard about the tragedy on 13.09.2012.

14. As regards PW3 Amit Kumar, the stand of the learned Deputy Advocate General is that there is nothing unnatural that he saw the appellant with the deceased; did not think too much of it at that time and left for Panchkula on 11.09.2012 only to return a week later; on his return he came to know about murder of the deceased child and he informed the police about what he had seen.

15. As regards the argument that it was very strange that extra-judicial confession had been made in the Dera where admittedly many people were present, the learned Deputy Advocate General has argued that there is nothing surprising about it and it is very easy to go and whisper something in the ear of somebody else in a confidential manner when lots of people were present and they may not hear the same.

16. As regards the ownership of the telephone, the learned Deputy Advocate General has pointed out to the testimony of PW11 Jatinder Singh who was the Carpenter with whom the appellant was working as Helper/Assistant, who testified that he had given his phone numbers to the appellant for his own work.

17. As regards the argument that the death was not caused by strangulation and this belied the statement of PW2 Mahant Garib Dass, however, in the vernacular testimony of PW2, he had stated that the appellant had told him that he had done bad act with the child, then

throttled him and thrown him in the canal. But nowhere had he stated that the appellant had told him that he killed the child and thrown him in the canal minor. It is not uncommon that on being strangled a person may lose consciousness and may be thrown believing him to be dead whereas he may just be unconscious, in which case death would be caused by drowning and not strangulation.

18. As regards the presence of aluminum phosphide/phosphine compound pesticide in viscera of the deceased, no doubt it is an unexplained situation. But since the dose was not fatal it cannot be lost sight of that in view of the rampant use of such pesticides while farming, traces of aluminum phosphide may be found in every person of this country today which may have been transferred to the body through food. In the circumstances, the detection of poison cannot be linked to the death of the child and hence has no bearing on the case.

19. Even though the appellant was not charged under Section 377 IPC yet we cannot turn a blind eye to the fact that there were abrasions around the anal orifice, thereby corroborating the statement of PW2. Further the argument that when the complainant was asked whether PW2 and 3 or 4 persons had accompanied him at the time when the body was identified but he did not deny the same, it is stated that the complainant replied that he did not remember the same. When somebody's child has died then what kind of answer one can expect from the person? The complainant must have been confused and did not possess his full consciousness at the relevant time.

20. The argument that PW1 i.e. the complainant and father of the

deceased and PW2 Mahant Garib Dass were very close friends would also not have too much relevance in the present case. It is not a case where the complainant and the appellant have an inimical relationship. There is a chance of false implication in a blind murder case and in that case near friends and relatives may give false testimony about an enemy but in the present case the appellant had no enmity with the complainant and had no motive to falsely implicate the appellant. Moreover, as the father of the deceased child his only concern would have been that the right person should be punished and no wrong person should be punished for this heinous offence.

21. The last seen evidence are also credible as they stood the test of cross-examination unshakably and the defence had not been able to elicit anything which may go in favour of the appellant.

22. Consequently, while upholding the conviction of the appellant we dismiss the appeal.

23. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 07, 2019
ashish

(ALKA SARIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No