

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

1.

CRA-D-561-DB-2003

Balwanti and another

... Appellants

Versus

The State of Haryana

... Respondent

2.

CRR-1768-2003

Dalbir Singh

... Petitioner

Versus

Balwanti and another

... Respondents

**Reserved on : 08.01.2019
Date of decision : 17.01.2019**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Mr. Sudhir Sharma, Advocate and
Mr. Ram Krishan Rana, Advocate
for the appellants in CRA-D-561-DB-2003
and for the respondents in CRR-1768-2003.

Mr. C.S. Jatana, Advocate
for the petitioner in CRR-1768-2003.

Mr. Vishal Garg, Addl. A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeal and revision petition, therefore these are taken up together
and disposed of by a common judgment.

2. The aforesaid appeal and revision petition have been instituted against the judgment and order dated 26.05.2003 and 29.05.2003 rendered by the learned Sessions Judge, Gurgaon, in Sessions Case No.12 of 15.06.2000 whereby the appellants were charged with and tried for offences punishable under Sections 302, 201 of the Indian Penal Code (in short 'IPC'). Appellant Rambir was convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence punishable under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence punishable under Section 201 IPC. Appellant Balwanti was convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence punishable under Section 302 read with Section 34 IPC. She was also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence punishable under Section 201 read with Section 34 IPC. The substantive sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that appellant Balwanti is the real sister of appellant Rambir. Balwanti had illicit relations with deceased Satbir. Satbir was taking advantage of the situation. He misbehaved with Dayawanti, daughter of Balwanti. She did not tolerate it.

She brought this fact to the notice of her brother Rambir. Thereafter a conspiracy was hatched to kill Satbir. On the intervening night of 21/22.11.1999, accused Balwanti mixed sleeping pills in the liquor of Satbir. When he became unconscious, she put cotton in his mouth. Accused Rambir caused injuries to Satbir with a stone. Satbir succumbed to the injuries. His dead body was found in a gunny bag in the area of villae Narsingpur. The dead body was identified by PW-8 Dalbir, real brother of the deceased and Jagdish. The case of the prosecution is that Balwanti and Rambir had made an extra judicial confession before PW-9 Mahabir Singh. The body was sent for post-mortem examination. PW-1 Dr.Sanjay Narula had conducted the post-mortem examination. As per his opinion, the cause of death was due to asphyxia caused by gagging coupled with manual strangulation. The matter was investigated and challan was put up after completing all the codal formalities. One of the accused Satish died during the pendency of the trial.

4. Prosecution examined a number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. They were convicted and sentenced as noticed hereinabove. Hence the appeal.

5. Criminal Revision No.1768 of 2003 has been filed by the complainant for enhancement of sentence and also for compensation to the tune of Rs.20 lacs. However, notice was issued regarding compensation only.

6. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the judgment and order dated 26.05.2003 and 29.05.2003.

8. Learned counsel for the complainant has also argued that his client be paid compensation.

9. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

10. PW-1 Dr.Sanjay Narula had conducted the post-mortem examination. He had noticed the following injuries on the body:-

“1. Lacerated wound 2 cms x .5 cm over frontal region in the midline.

2. Lacerated wound 1 x .5 cm just behind injury no.1.

3. Lacerated wound 2.5 x .5 cm over fonto parietal region.

4. A triangular wound of dimensions 1 x 1 x1 cm just behind injury no.3.

5. A inverted V shaped wound over occipital region on right side. The long limb was 2.5 cms x .5 cm and short limb was 1 x .5 cm.

6. Lacerated wound 1 x 5 x .5 cm over the forehead just left of midline.

7. Oblique lacerated wound 2.7 cms in length over midline of the forehead between eyebrows.

8. Linear wound of size 1 cm in length just right of the injury no.1.

9. Oblique linear wound 1 cm in size over right side of forehead.

10. Contusion 2.5 x 1 cm just above lateral and of right eyebrow.

11. Contusion 2 x 1 cm at lateral can thus of right eye.

12. There was light black eye. There is extensive sub conjunctival haemorrhage in the eye.

13. *Linear wound of the size 2.5 cms vertically place below righteye.*

14. *Linear wound 1.5 cms of size at right nostril.*

15. *There was multiple small superficial abrasions on the both side of neck "Nail marks".*

16. *Nose was swollen."*

The cause of death according to PW-1 was due to asphyxia consequent upon gagging coupled with manual strangulation. The injuries were ante-mortem in nature and sufficient to cause death in natural course. The interval between injury and death was few minutes and between death and PMR was within 24 hours. He proved the post-mortem report Ex.PA/1.

11. PW-2 Suresh Kumar, PW-3 Constable Naresh Kumar, PW-4 HC Gobind Ballabh, PW-5 ASI Rakam Singh, PW-6 HC Jagdish Chand and PW-7 HC Dharam Pal are formal witnesses.

12. PW-8 Balbir Singh testified that Satbir was his younger brother. He was having illicit relations with Balwanti accused. He used to reside with her for the last 15 years. He had asked Subedar Mahipal who is *Jeth* of Balwanti to persuade Balwanti not to encourage the relationship. On this a quarrel had taken place between Satbir and Mahipal. Satbir had fired at Mahipal with his country made pistol. The case was pending in the Court of Additional Sessions Judge, Gurgaon. He was in the army and had given power of attorney in favour of Satbir to look after land. Satbir had received compensation when the land was acquired and had spent the same on Balwanti. Now he was left with one killa of land which was co-owned by all the brothers. On 22.11.1999 at about 9.15 A.M., he came to know that dead body of Satbir was lying in panchayat land in village Narsingpur by the side of *kacha rasta*. He informed his brother Jagdish. They went to the

spot. He identified the dead body of Satbir. In cross-examination he admitted that though he had given power of attorney in favour of Satbir somewhere in the year 1990 but he could not produce the copy of power of attorney before the police. He was confronted with his statement Ex.PF. He had told the police that Satbir had illicit relations with Balwanti but it was not specifically mentioned in Ex.PF. The quarrel between Satbir and Mahipal had taken place about eight months prior to the present occurrence. He was not present when the quarrel had taken place. The compensation received of the land acquired was about Rs.2,75,000/-. There was a general rumour in the village about the dead body of his brother lying in village Narsingpur. He could not specify who had told this fact to him. The spot was at a distance of about 3 kilometer from their village.

13. PW-9 Mahabir Singh is a material witness. He testified that on 04.03.2000 he along with Sunder was present at his house. At about 10.00 A.M. Balwanti and Rambir came to him. Balwanti made an extra judicial confession that she was having illicit relations with Satbir for the last 15/20 years. She had filed a complaint against Satbir to the police that Satbir had molested her daughter Dayawanti. The matter was compromised. Balwanti also told him that when Dayawanti had gone to her maternal uncle Rambir in village Khudan, District Jhajjar, she narrated about the molestation by Satbir. Rambir became furious and came to see her in village Khandsa. They hatched a conspiracy to murder Satbir. Balwanti also told that she mixed sleeping pills in the liquor of Satbir on 21.11.1999 in the night. Satish was also present along with Rambir. Balwanti further disclosed that when Satbir became unconscious, they put cotton in the mouth of Satbir and Rambir caused injuries with a stone on the head of Satbir. Police had come to know

about this and they were looking for them. In his cross-examination, he deposed that Balwanti was *Harijan* whereas Satbir was *Rajput*. The house of Balwanti was at a distance of 200 yards from his house. There must be 20 houses in between. On 22.11.1999 he came to know about the murder of Satbir. He knew about the illicit relations between Balwanti and Satbir on 22.11.1999. He was not aware before arrival of Balwanti and Rambir to his house who committed the murder of Satbir. He had no suspicion against the three accused. He had stated in the police station that Balwanti told him that he was a respectable person. He was confronted with Ex.PB where it was not so recorded.

14. PW-11 DSP Fateh Singh deposed that he was posted as SHO, Police Station Sadar Gurgaon, on 25.01.2000. On 04.03.2000 accused Balwanti and Rambir were produced before him by Mahabir Singh and Sunder. He arrested them in this case. He also recorded statement of Mahabir and Sunder. On 09.03.2000 he arrested accused Satish in this case. In his cross-examination he deposed that he came to know about the involvement of accused in this murder about 7/8 days prior to 04.03.2000. He received secret information with regard to their involvement. He tried to arrest them but they were not traceable. He had visited village Khandsa and Khuddan in order to arrest them. He might have entered this fact in DDR about his departure.

15. PW-13 Mawasi Ram deposed that he was posted in Police Station Sadar Gurgaon as SI on 22.11.1999. He received a message on telephone that a dead body was lying in the area of village Narsingpur. Photographs of dead body were taken. He recorded the statement of Dalbir Ex.PF. Recoveries were made. Dead body was sent for post-mortem

examination through Constable Om Parkash and Gobind Ballabh.

16. What emerges from the discussion of the evidence hereinabove is that the case of the prosecution entirely hinges on extra judicial confession made by the appellant before PW-9 Mahabir Singh. The incident had taken place on the intervening night of 21/22.11.1999. The extra judicial confession was made on 04.03.2000. It is well settled that the extra judicial confession has to be made at the earliest before a man of authority. The matter remained under investigation for more than 4 months. Balwanti, as per statement of PW-9 Mahabir Singh, was *Harijan* and Satbir was *Rajput*. The cause of death as per statement of PW-1 Dr. Sanjay Narula was due to asphyxia. In the inquest report, injuries are caused by sharp edged weapon but according to doctors these could be caused by stones. According to PW-9 Mahabir Singh, the extra judicial confession was made before him by the accused. In case the statement was made before him, he should have informed Dalbir Singh who is complainant in this case. PW-9 Mahabir Singh has admitted in cross-examination that he had not informed Dalbir Singh about the extra judicial confession made by the appellants. The statement of Mahabir Singh was also recorded under Section 161 Cr.P.C. after about 4 months. It is for the prosecution to prove the conspiracy. In ***State (Delhi Admn.) vs. V.C. Shukla and another, AIR 1980 Supreme Court 1382***, their Lordships of the Hon'ble Supreme Court have held as under:-

“8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120 B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an

offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove

some sort of a connection of the appellants with the alleged destruction of the film.”

17. Accordingly, CRA-D-561-DB-2003 is allowed and the judgment and order 26.05.2003 and 29.05.2003 is set aside. The appellants are acquitted. The bail bonds and surety bonds of the accused are discharged.

18. In view of the reasons recorded hereinabove, CRR-1768-2003 filed by the petitioner (complainant) for compensation is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 17, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No