

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

**CRA-D-733-DB-2003 (O&M)
Date of decision : 29.11.2019**

Shankar

...Appellant

Versus

State of Haryana

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. H.S. Randhawa, Advocate/*amicus curiae*,
for the appellant.

Mr. Vikrant Pamboo, DAG, Haryana.

JITENDRA CHAUHAN, J.

Assailed in the instant appeal is the judgment of conviction and order of sentence dated 27/29.09.2001, passed by learned Additional Sessions Judge, Sonipat (for short, 'the trial Court'), thereby, convicting the accused appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code (for short, 'the IPC') and sentencing him to undergo rigorous imprisonment for life and to pay a fine of ₹2,000/- with default stipulation.

Brief facts of the present case as noticed in paragraph No.2 of the

impugned judgment are as under:-

“2. Briefly stated the facts of the present prosecution case as alleged are that on 18.5.1998 Tikka Ram got recorded his statement to ASI Mehar Singh to the effect that on 18.5.1998 he, alongwith his son Dharambir, went to pluck maize from his maize field in Baghwala. They were plucking the maize, then they found that some sand has been dug in the field and a foul smell was coming out of it. He, alongwith his son, went to that place and saw a hand which was wearing bangles. A lady has been buried in the sand. He has left his son in the field and has come to lodge the report. On this formal FIR under Section 302 IPC was registered in Police Station, Rai. During the course of investigation, Mohinder Singh identified the dead body of his wife who was not traceable since 13.5.1998. Mohinder Singh has also lodged the report in the police station regarding this fact on 16.5.1998 that he was married with Ram Kali about 8/9 years back and was blessed with two sons and a daughter. On 13.5.1998 his wife, Ram Kali, went to bring fodder from the field of Shera but she did not return. He was not having doubt on anyone regarding abduction of his wife, Ram Kali. The post mortem examination of the dead body of Ram Kali was conducted. On 21.5.1998, Hari Chand produced Shankar, accused before District Inspector Ravinder Kumar and told that Shankar is the servant of Tika Ram who has told that he has committed the murder of Ram Kali by strangulation after having sexual intercourse with her. Shankar also told Hari Chand that he has concealed the body in the same field

of maize crop. Shankar was arrested who recorded the disclosure statement before the police and got recovered the spade and the slippers of the deceased which were taken into possession by the police. The accused was arrested and after completion of necessary investigation, accused/Shankar was sent up to face trial under Section 302/201 IPC by the Police Station, Rai.”

Charges under Sections 302 and 201 IPC were framed, to which he pleaded not guilty and claimed trial.

The prosecution initially examined as many as ten witnesses and meanwhile, accused Dharambir was summoned under Section 319 Cr.P.C.

Both the accused were charged under Sections 302 and 201 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution, in all, examined twelve witnesses, viz., UGC Siri Bhagvan as PW-1; Dr. P.K. Paliwal as PW-2; Sudhir Kumar, Photographer as PW-3; Tika Ram as PW-4; Mohinder Singh as PW-5; Sardul Patwari as PW-6; Constable Virender as PW-7; Hari Chand as PW-8; Lakhmi Chand as PW-9; SI Mahabir Singh PW-10; ASI Mehar Singh as PW-11; and DSP Ravinder Kumar as PW-12.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing against them and pleaded false implication. However, they did not lead any evidence in defence.

After hearing learned counsel for the parties, learned trial Court vide the impugned judgment dated 27.09.2001, acquitted co-accused

Dharambir by giving benefit of doubt, whereas, accused-appellant Shankar was convicted and sentenced as detailed at the outset of this judgment.

Heard learned counsel for the parties and carefully perused the record with their able assistance.

Admittedly, the instant case is based upon circumstantial evidence and Hon'ble the Supreme Court in ***Raja @ Rajinder v. State of Haryana, 2015(2) R.C.R. (Criminal) 1006*** has stressed that in a case resting on circumstantial evidence, the court has to be satisfied that :

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

In the instant case, the criminal law was set in motion on the statement of Tika Ram to the effect that in the morning of 18.05.1998 at around 8.00 a.m., when he along with his son, co-accused Dharambir, had gone to harvest their maize crop in their field. A pungent smell was

emitting. They went near the spot and after removal of earth, they noticed that a dead-body of a female was lying buried. On the basis of said statement, the instant FIR came to be registered.

On the same day, the statement of the husband of the deceased, Mohinder Singh, got recorded his statement under Section 161 Cr.P.C. (Ex.DA), wherein, he had stated that a few days back, his wife had gone to the fields of Shera Jatt to fetch fodder but did not turn back home. When he went in search of his wife, since deceased, he reached the field of the complainant, Tika Ram, where the present appellant, Shankar, was also present. Shankar refused to allow him to enter in the fields. Thereafter, on 16.09.1998, he went to the Police Station, Rai and lodged a missing report. On 18.05.1998, a dead-body was found buried in the field of the complainant. Subsequently, he reached in that field and identified the dead-body to be of his wife. Thereafter, he was sent by the police to Civil Hospital, Sonipat, for the purpose of post-mortem examination.

On perusal of the evidence, it appears that husband of the deceased, namely Mohinder Singh, was planted as a witness to establish motive against the appellant. In his statement recorded under Section 161 Cr.P.C., Mohinder Singh has categorically mentioned about lodging of missing report with the police station. However, no such missing report has been proved on record. Further, in his statement, he records that the deceased had gone to the fields of Shera Jatt. That being so, there was no occasion with him to go to the fields of the complainant to search for his

wife. Lastly, he has stated that he identified the body on the spot and thereafter, went to the hospital for postmortem examination. However, a perusal of the postmortem report (Ex.PA), reveals that the body was brought by and had been identified by some other persons. Interestingly, the inquest report (Ex.PB/1) has been signed by none other than Dharambir, the son of the complainant and also Hari Chand Sarpanch, alleged witness of the extrajudicial confession.

It is also noteworthy that during the course of trial, PW-5 Mohinder Singh, husband of the deceased, had moved an application under Section 319 Cr.P.C. for summoning said Dharambir as an additional accused, which was allowed. Thereafter, while appearing as PW-5, he has come up with a true story. He has stated that the deceased had gone to bring dry stalks (toora) from the fields of Tikka Ram (complainant). He had gone to the field of Tikka Ram in search of his wife but was not allowed to enter by Bittoo, Dharambir and Shanker. He has also stated that the appellant had told him that Tikka Ram, owner of the field had asked him not to allow anyone to enter in the fields. Further, his wife had been murdered by Dharambir and Bittoo and not Shankar and that he never named Shankar as the culprit. He has also testified that the *chappals* were got recovered by Dharambir. The version of this witness is duly corroborated by the deposition of Lakhmi Chand who appeared as PW-9 and deposed that Dharambir had got recovered the slippers (*chappals*) of the deceased and hoe (*kassi*). The appellant was brought in by the police subsequently. He

has also denied his signatures on the recovery memo.

As regards the alleged extrajudicial confession of the appellant before PW-8, Hari Chand, Sarpanch, he has stated in his evidence that the appellant made disclosure statement before him to the effect that he had kept concealed one pair of *chappal* in the tubewell and a *kassi* in a room adjoining the tubewell. In his cross-examination, this witness has stated that when the appellant was making disclosure statement, Mohinder Singh, husband of the deceased was also present there, which fact is completely against the record. Thus, when a comparison is drawn between the statement of this witness before the Police (Ex.PG) and his statement before the Court as PW-8, the same does not inspire any confidence. In his statement Ex.PG, he has stated that the appellant went to him and asked him to be produced before the police. Further, the appellant had firstly raped the deceased and subsequently murdered her because she had threatened to disclose the factum of rape to the brother of the employer (Tikka Ram), working in the adjoining field. To the contrary, while appearing as PW-8, he has stated that the appellant had never come to him, rather he had on his own produced him before the police. The story of rape has also been changed to that of consent. Otherwise also, the extrajudicial confession is a weak type of evidence and requires appreciation with great deal of care and caution. Reliance in this regard can be placed on the judgment of Hon'ble the Supreme Court in ***Balbir Singh Vs. State of Punjab, 1999(4) R.C.R. (Criminal) 51***, which has laid down as under:-

“3. *The only evidence against the appellant was a extrajudicial confession stated to have been made by the appellant before the Sarpanch of the village, the dying declaration of Sukhwinder Kaur recorded by the Police on 10.12.1990 and the dying declaration recorded by the Judicial Magistrate on 11.12.1990. Both the Trial Court and the High Court rectified upon the two dying declarations and also the extrajudicial confession for the purpose of convicting the accused. It was submitted by the learned counsel for the appellant that the Courts below have committed a grave error in relying upon the extrajudicial confession as it was highly improbable that in absence of any relationship with the Sarpanch or for any other good reason, the appellant would have gone to the Sarpanch and confessed that he had purchase the poisonous tablets which led to the death of Sukhwinder Kaur. If what the Sarpanch has deposed was really true, the investigating officer would have then tried to find out from whose shop the tablets were purchased. No such attempt was made. The evidence of Sarpanch is not such as could have been accepted without any independent corroboration. Even the trial Court and the High Court have not considered the extrajudicial confession as sufficient to prove the guilt of the appellant. It has been regarded as a piece of evidence furnishing independent corroboration to the dying declarations. An extrajudicial confession even if believed is considered a very weak piece of evidence and ordinarily is not accepted without independent corroboration. In this case, it was of a doubtful character and therefore it was wrong to rely upon it and*

hold that it afforded good corroboration to the dying declarations.”

In the instant case as well, the alleged extrajudicial confession is surrounded by suspicious circumstances and thus, its credibility becomes doubtful. Apart from the material contradictions in the statements of PW-8, Hari Chand, Sarpanch, as discussed in detail hereinabove, it remains a mystery as to what prompted the appellant to make a confession before PW-8, Hari Chand, Sarpanch of the village. Moreover, it has come in the testimony of PW-5, Mohinder Singh, that the Sarpanch did not help him when he reported to the Sarpanch that the Police was not recording his statement properly.

It is the settled principle of criminal jurisprudence that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Only after the initial burden is discharged by the prosecution, the onus shifts on the accused to rebut the presumption. Such burden can only be discharged by leading cogent evidence by the prosecution. In the case of ***Md.Faizan Ahmad @ Kalu v. State of Bihar, 2013 (2) SCC 131***, Hon'ble the Supreme Court has observed as under:

“11. Criminal Courts recognize only legally admissible evidence and not farfetched conjectures and surmises. The High Court's observation that there was a preconceived plan to abduct the children would not be applicable to the appellant because there is nothing on

record to establish that the appellant met the co-accused and planned a strategy to abduct the children and demand ransom. His case stands on a different footing from that of other accused. The case of the other accused will have to be dealt with on its own merit. The High Court was carried away by the heinous nature of the crime and, in that, it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a Criminal Court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing great violence to the basic tenets of criminal jurisprudence. We hope and trust that this is just an aberration."

In ***Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85***, Hon'ble the Supreme Court reiterated another fundamental principle of criminal jurisprudence that if two views are possible upon appreciation of the evidence adduced, i.e. one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It was observed as under:-

"7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made

guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

The sum and substance of the above discussion is that the prosecution has failed to bring out the true genesis of the occurrence and has miserably failed prove its case against the accused-appellant beyond shadow of reasonable doubt.

Consequently, the instant appeal is allowed; the impugned judgment of conviction and order of sentence dated 27/29.09.2001, passed by learned trial Court is set aside; and the appellant is acquitted of the charges framed against him. The appellant is stated to be in custody. He be released forthwith, if not required in any other case.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

29.11.2019

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No