

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-524-DB-2005
Reserved on : 12.02.2020
Date of decision : 02.03.2020

Rajbir Singh and others

... Appellants

Versus

State of Punjab

... Respondent

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

Present: Mr. Sukhbir Singh, Advocate
for the appellants.

Mr. H. S. Grewal, Addl. A. G. Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 20.04.2005 rendered by the Additional Sessions Judge, Amritsar, in Sessions Trial no.24 dated 14.06.2004 whereby the appellants were charged with and tried for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code (in short 'IPC') and Section 201 IPC. The appellants were convicted and sentenced as under:-

“Accused Rajbir Singh

i) *Under Section 302 read with Section 34 of the IPC, he is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for three months.*

ii) *Under Section 201 of IPC, he is sentenced to*

undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, he shall further undergo rigorous imprisonment for one month.

Accused Resham Singh

i) Under Section 302 read with Section 34 of the IPC, he is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for three months.

ii) Under Section 201 of IPC, he is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, he shall further undergo rigorous imprisonment for one month.

Accused Harjit Kaur

i) Under Section 302 read with Section 34 of the IPC, she is sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of fine, she shall further undergo rigorous imprisonment for three months.

ii) Under Section 201 of IPC, she is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine, she shall further undergo rigorous imprisonment for one

month.”

All the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Dilbagh Singh resident of village Boharwala had come to Amritsar on 09.11.2003 at about 3.00/4.00 P.M. He did not come back. On 11.11.2003, Sukhwant Kaur wife of late Dilbagh Singh received a message from police through Gurlal Singh. She along with Rajbir Singh and others went near Mental Hospital, Amritsar. The dead body of Dilbagh Singh was lying. DDR no.11 dated 11.11.2003 was recorded. Inquest report was prepared. The post-mortem was conducted. Viscera was sent to the office of Chemical Examiner, Patiala. The report of Chemical Examiner was received on 07.01.2004. According to the Chemical Examiner Report, chloro compound group of insecticides was detected in the viscera of the deceased. Statement of Sukhwant Kaur was recorded by the police on 25.02.2004 on the basis of which FIR Ex.PD/3 was registered. The matter was investigated. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6

We have heard learned counsel for the parties and have gone

through the judgment and record very carefully.

7. PW-1 Dr.Manpreet Kaul deposed that the dead body was brought by Constable Anil Lal and Constable Rajinder Singh. It was identified by Gurlal Singh son of Bindu Pal and Madan Lal son of Bura Mal. After receipt of report of Chemical Examiner dated 24.12.2003, the cause of death in her opinion was chlorocompound poisoning. It was sufficient in normal course of nature to cause death. She proved the report of Chemical Examiner Ex.PB and her opinion Ex.PB/1. In her cross-examination, she admitted that in the report Ex.PB the quantity of chlorocompound found in the viscera of deceased was not given.

8. PW-2 Rishi Ram prepared the site plan Ex.PC.

9. PW-3 Sukhwant Kaur testified that she was working as teacher in Government Primary School of village Madhushanga. Her husband Dilbagh Singh was also teaching in Government High School in village Madhushanga. Her husband had purchased one plot in village Niwin Tung, Abadi Mohkampura, Amritsar. One room, one bath room and one kitchen were constructed in the said plot. She knew the accused. On 09.11.2003, her husband Dilbagh Singh left village Boharwala at 3.00/4.00 P.M. stating that he was going to Amritsar. However, he did not come back. On 11.11.2003, a telephone call was received in village Boharwala about the death of Dilbagh Singh. The telephone was from the police. Gurlal Singh son of uncle of her husband came to her in the school. Her daughter Navpreet and her mother-in-law were already present near Mental Hospital, Amritsar where the dead body was lying. She had seen the dead body. It had turned blue. She came to know that her husband had been administered some poisonous substance.

Her husband was killed by the accused party because after the incident Rajbir Singh had disclosed that her husband had illicit relation with Harjit Kaur. Rajbir Singh told Harjit Kaur that he would get the said plot transferred in her name but her husband did not agree to this proposition. Therefore, all the accused in conspiracy with each other had killed her husband. Her statement was recorded by the police on 25.02.2004 vide Ex.PD. In her cross-examination, she deposed that when she saw the dead body of her husband near Mental Hospital, the police was present there. Apart from her daughter and mother-in-law, some other relatives had also reached there. Gurmit Singh was her real brother. Davinder Singh was her sister's husband. She admitted that no rent note was executed by Harjit Kaur and her husband in their favour.

10. PW-4 Gurmeet Singh deposed that on 09.11.2003 he met Dilbagh Singh on the way from Mattenangal to Fatehgarh Churian. He wanted his assistance in connection with migration of his daughter. He told him that he was in haste. He would see him in his house at Mohkamura Abadi at Amritsar. He went to the house of Dilbagh Singh at Mohkamura at 8.00/8.30 P.M. Resham Singh and his wife were residing there as tenant. When he entered the house, Rajbir Singh, Resham Singh, Harjit Kaur and Dilbagh Singh were taking liquor. He remained there for 10/15 minutes. He was also offered liquor. However, he refused. On the next day, he had gone to his village. On the next day, his brother-in-law (brother of his wife) had come and he had taken him to Moga in connection with purchase of tractor. They spent 3 / 4 days there. Then he came back to village. He came to know about the death of Dilbagh Singh. He was informed by his sister that the

body of Dilbagh Singh had turned blue. Then he told her that on the evening of 09.11.2003 Dilbaghf Singh and accused persons were taking liquor. His statement was recorded by the police on 25.02.2004.

11. PW-5 Dalwinder Singh deposed that he knew the accused. Rajbir Singh was cousin of deceased Dilbagh Singh. Resham Singh had been visiting his house along with Rajbir Singh. He had visited the house of Resham Singh at Mohkampur and seen Harjit Kaur there. Therefore, he knew her. On 26.02.2004 Resham Singh and Harjit Kaur came to his house. At that time, Jagjit Singh resident of Boharwala was sitting with him. Rajbir Singh stated to him that he wanted to have a talk with him. He asked him that he could talk even in the presence of Jagjit Singh. He told that he along with Resham Singh and Harjit Kaur were taking liquor. They mixed poisonous substance in the liquor of Dilbagh Singh which led to his death. They had committed grave mistake. Similar statement was repeated by Resham Singh and Harjit Kaur. They requested him to intervene. Then they met the police. In his cross-examination, he deposed that his wife was real sister of PW Sukhwant Kaur. He never remained Nambardar, Panch or Sarpanch of the village. He had no relation with Jagjit Singh. He admitted that he was not present there when the dead body of Dilbagh Singh was recovered. He further admitted that on 25.02.2004 statements of Sukhwant Kaur and Gurmeet Singh were recorded in his presence.

12. PW-6 ASI Lakha Singh had prepared the inquest report vide Ex.PE. The dead body was identified by Gurlal Singh and Madan Lal. It was sent for post-mortem examination.

13. PW-7 ASI Manjit Singh deposed that accused Harjit Kaur was

interrogated. Her statement was recorded vide Ex.PJ. According to her, empty bottle was kept by her in the courtyard of her house. She could get it recovered. She got it recovered. It was taken into possession. In his cross-examination, he admitted that no public witness was joined at the time of recovery of bottle.

14. PW-9 Gurlal Singh deposed that on 11.11.2003 a telephonic message was received. He called for Sukhwant Kaur. He came to Amritsar along with Sukhwant Kaur. He had seen the dead body of Dilbagh Singh. It had turned blue. He did not know who were the tenants in house. Accused Rajbir Singh and deceased had great love and affection towards each other and was related to each other. He did not know where Rajbir Singh was residing. In his cross-examination, he deposed that he did not receive any telephonic call from the police. The message was received on the telephone of one Babbu of their village. However, Babbu did not accompany them.

15. PW-12 Inspector Vikram Chand deposed that on 25.02.2004 he was posted as SHO, Police Station Civil Lines, Amritsar. He along with other police officials was present at Chowk Rattan Singh. Sukhwant Kaur wife of deceased Dilbagh Singh came to him. Her statement Ex.PD was recorded. The contents of the same were read over to her. He along with Sukhwant Kaur went to the place of occurrence and prepared rough site plan. On 27.02.2004 he was present at Kichlu Chowk, Amritsar. Dalwinder Singh and Daljit Singh met him. They were joined in the investigation. Dalwinder Singh stated that he wanted to talk with him only. He got recorded his statement under Section 161 Cr.P.C. On 28.02.2004 he was present at Sessions Court Chowk Amritsar along with other police officials.

Rajbir Singh, Resham Singh and Harjit Kaur were travelling in a car. They were intercepted. They were arrested. On 01.03.2004, Harjit Kaur was interrogated. She made disclosure statement Ex.PJ on the basis of which empty bottle was recovered.

16. Ex.PB is the report of Chemical Examiner. According to it, Chlorocompound group of insecticides was detected in the contents of exhibits I, II and III, i.e. pieces of stomach, small intestine, liver, spleen and half of each kidney.

17. PW-1 Dr.Manpreet Kaul gave her opinion vide Ex.PB/1 that the cause of death in this case in her opinion was Chlorocompound poisoning which was sufficient to cause death.

18. The dead body of Dilbagh Singh was recovered on 11.11.2003. FIR was registered on 25.02.2004. The Chemical Examiner's report is dated 24.12.2004. In the earlier statements recorded before the police by Balbir Kaur and Satwant Kaur, they had not named any person. PW-3 Sukhwant Kaur deposed that her husband had gone to Amritsar. His dead body was found on 11.11.2003. It had turned blue. Thereafter, on receipt of Chemical Examiner's report, they had suspicion that her husband was poisoned by the accused. The motive attributed by her was that after the death of her husband, Rajbir Singh had disclosed that her husband had illicit relations with Harjit Kaur. Rajbir Singh asked Harjit Kaur to get the plot transferred in her name but her husband did not agree to this proposition. Therefore, all the accused had conspired to kill her husband. PW-4 Gurmeet Singh has been introduced by the prosecution to prove the theory of "last seen together". According to him, he met Dilbagh Singh on 09.11.2003. He went

to Amritsar. He went to the house of deceased at Mohkamura at 8.00/8.30 P.M. Resham Singh and his wife were residing there. He entered the house. Rajbir Singh, Resham Singh, Harjit Kaur and Dilbagh Singh were taking liquor. He did not take liquor. Thereafter, on the next day, he had gone to his village and on the next day, his brother-in-law (brother of his wife) had come. He had taken him to Moga to purchase a tractor. They spent 3/4 days there. He came back to village. He came to know about the death of Dilbagh Singh. He was informed by his sister that dead body of Dilbagh Singh had turned blue. Then he told her that on the evening of 09.11.2003 Dilbagh Singh and accused persons were taking liquor. PW-4 Gurmeet Singh is real brother of Sukhwant Kaur. It is not believable that he would not visit the place where dead body of his brother-in-law was found. He was not present at the time of cremation. It is not believable that he would not have been informed about the death of his brother-in-law. In case he had told his sister that he had seen Dilbagh Singh in the company of accused, he would have definitely brought this fact in the notice of his sister PW-3 Sukhwant Kaur. In his cross-examination, he deposed that he wanted the help of Dilbagh Singh for migration of his daughter. Till the death of Dilbagh Singh, no migration form of his daughter was given. She had a compartment and migration application could not be given. Statement of PW-4 Gurmeet Singh does not inspire confidence.

19. The case of the prosecution further is that accused made disclosure statement before PW-5 Dalwinder Singh. According to him, on 26.02.2004, Resham Singh and Harjit Kaur came to his house. Jagjit Singh was also present. Rajbir Singh told him that he wanted to talk to him. He

told him that he along with Resham Singh and Harjit Kaur were taking liquor. They mixed poisonous substance in the liquor of Dilbagh Singh. PW-5 Dalwinder Singh in his cross-examination admitted that he was neither Nambardar, nor Panch or Sarpanch of the village. According to him, Jagjit Singh was also present. However, he was not examined. His wife was real sister of Sukhwant Kaur.

20. The empty bottle was recovered as per prosecution on the basis of statement of accused Harjit Kaur vide Ex.PJ. There was no occasion for her to hide the empty bottle mark Chlorpyrifos 20% E.C. Ex.PJ/1 for number of days when she could have easily disposed it of.

21. There is inordinate delay in lodging the FIR. More particularly PW-4 Gurmeet Singh had claimed that he had seen the deceased in the company of accused on 09.11.2003. The prosecution has not proved the motive. It has come in the statement of PW-9 Gurlal Singh that Rajbir Singh and deceased had great love and affection towards each other and was related to each other. According to PW-3 Sukhwant Kaur, Dalwinder Singh had gone to the spot, where the dead body was found. However, PW-5 Dalwinder Singh in his cross-examination has deposed that he was not present near the Mental Hospital on 11.11.2003 where from dead body of Dilbagh Singh was recovered. PW-5 Dalwinder Singh has also admitted that statements of Sukhwant Kaur and Gurmeet Singh were recorded in his presence on 25.02.2004.

22. The case is based on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, chain must be complete and all the circumstances must point towards the guilt of the accused. In the

present case, the chain is not complete. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

23. Accordingly, the appeal is allowed. The judgment and order dated 20.04.2005 are set aside. The appellants are acquitted of the charges. The appellants are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 02, 2020.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No