

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

CRA-D-563-DB of 2005

Reserved on : 14.02.2020

Date of decision : 19.02.2020

Binda Lal Paswan

.... Appellant

Versus

State (Union Territory of Chandigarh)

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. H.S. Grewal, Advocate (Legal Aid Counsel) with
Ms. Sumanjit Kaur, Advocate,
for the appellant.

Mr. Rajeev Sharma, Additional P.P. Chandigarh.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment and order dated 04.05.2005, rendered by learned Additional Sessions Judge, Chandigarh, in Sessions Case No. 29 dated 03.01.2002, whereby appellant Binda Lal Paswan, who was charged with and tried for the offence punishable under Section 302 IPC, was convicted and sentenced thereunder to undergo rigorous imprisonment for life and to pay a fine of ₹ 500/-, and in default of payment of fine to undergo further rigorous imprisonment for a period of six months.

2. The case of the prosecution, in a nutshell, is that Binda Lal Paswan, the accused, and Kamlesh wife of Ram Avtar (since deceased) had developed illicit relations. Ram Avtar became aware of the illicit relations. The accused decided to do away with Ram Avtar. On 11.06.2002, the accused is alleged to have taken Ram Avtar with him. He made him to drink. Thereafter, he took him to a forest situated between Mauli Jagran Colony and Railway Station, Chandigarh, on his rickshaw rehri. He also carried a wooden log in that rehri. The accused gave a blow with his wooden baton on the head of Ram Avtar. Ram Avtar fell on the ground. The case of the prosecution is also that on 12.06.2002, one M.L. Verma (PW.1) was proceeding towards Bitta Petrol Pump. He had to pass through the forest. He found some boys having gathered around a dead body. The dead body was of a person of the age of 25-30 years. M.L. Verma went to Police Station Mani Majra, Chandigarh. He lodged the FIR. On 14.06.2002, accused Binda Lal visited Mehboob, a barber, in his shop, situated in Mauli Jagran, U.T. Chandigarh. He made extra judicial confession before him. Thereafter, the accused got recovered the *danda*. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated. He also examined two witnesses in his defence. He was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

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

his client. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

6. PW.11 Dr. Sukhdev Singh conducted the post-mortem examination on 15.06.2002. He noticed the following injuries on the body of the deceased :-

- “1) Face swollen more on the right side with central part crushed, depressed and mutilated exposing both the jaws and tongue. Mutilation extends superiorly upto the route of nose, inferiorly upto the chin and latterly upto the angle of mouth. Multiple teeth missing. Fracture of angle of right mandible and both maxilla.
- 2) Part of the right ear missing.
- 3) Multiple abrasions over right upper arm and right forearm.
- 4) Multiple abrasions on right thigh”

The cause of death was head injury along with shock and haemorrhage which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The probable time that elapsed between injuries and death was within one hour. The probable time between death and post-mortem examination was within four days. He further deposed that after the post-mortem examination, a sealed wooden box containing dead viscera was sent for chemical examination. The chemical examiner report is Ex.P35. In his cross-examination, he deposed that the request of police for post-mortem examination was received on 15.06.2002.

There was no mention of alcohol in the post mortem report as well as in the

Chemical Examiner report.

7. PW.1 M.L. Verma testified that on 12.06.2002, he was proceeding to the Petrol Pump for filling up petrol in his scooter. He was proceeding to Bitta Petrol Pump through a kacha path for taking petrol. When he was passing through the jungle, he noticed the presence of some boys. He found the dead body of a person, which was unidentified. The age group of the deceased was 25 to 30 years. He noticed head injury on the dead body. Jaw of the deceased was broken and pushed inside. He reported the matter to Police Station Mani Majra. FIR Ex.P1 was recorded. Rough site plan was prepared by the Inspector of Police Station Mani Majra. In his cross-examination, he admitted that he had not stated about the head injury on the dead body in FIR Ex.P1.

8. PW.3 Kamlesh is the wife of the deceased. She testified that her husband left the house on 11.06.2002 in the morning. He was employed in a cement shop at Baltana. He came to house at 1.00 PM on 11.06.2002. He went away at 2.00 PM and again came to the house at 6.30 PM on 11.06.2002. He went away. Thereafter, he did not come back. Accused Binda Lal was labourer in a cement shop. He developed some acquaintance with her husband. He used to come to their house on some occasions. He had not stayed at their house for night. Binda Lal accused was married. He had five children. He was resident of Bihar. She never had conversation with him. She came to know that her husband was murdered on the night of 11.06.2002. She was called to identify the dead body of her husband at Sector 16 General Hospital, Chandigarh, on 13.06.2002. She had not stated to the police in her statement that Binda Lal accused had illicit relations

with her. She was declared hostile and was cross-examined by the learned Public Prosecutor. She was confronted with her statement Ex.P17. In her cross-examination by the learned defence counsel, she deposed that she came to know regarding the death of her husband on 13.06.2002. She went to hospital on 13.06.2002. Accused was arrested at 5.00 AM in the morning on 14.06.2002.

9. PW.4 Mehboob testified that on 14.06.2002, he was sitting in his barber shop at Vikas Nagar, Mauli Jagran, U.T. Chandigarh. At 3.00 PM, Binda Lal accused came to him. He wanted to talk to him in connection with murder that took place on 11.06.2002. He was known to him. He was a social worker. Binda Lal was very nervous. He talked to him for half an hour. He disclosed that he had illicit relations with a lady and husband of that lady had come to know about it. Binda Lal further disclosed that on 11.06.2002, he took the husband of that lady, namely Kamlesh, on a cart. Binda Lal made him to drink liquor. Thereafter, he took him in drunkard condition in a jungle. Binda Lal further disclosed that he had murdered that person with a *danda* in a jungle. He gave a *danda* blow on the head, mouth and face of that person. Binda Lal had come to him on a rehri and a *danda* was lying on that rehri which was stained with blood. He took Binda Lal along with that rehri and *danda* to the Police Station. He was confronted with his statement Ex.DA. He categorically admitted in his cross-examination that he did not know the address of the village of the accused in Bihar. The accused had five children. He did not know the names of the children. The place of work of the accused was at a distance of 8-10 furlong from his shop.

10. PW.5 Constable Yash Paul had prepared the scaled site plan Ex.P20.

11. PW.6 SI Balhar Singh deposed that at about 11.00 AM on 12.06.2002, he was present along with the police party. Inspector SHO Prem Singh Malik met him. He was accompanied by M.L. Verma, President of Vikas Nagar, Mauli Jagran. On the direction of SHO Prem Singh Malik, he accompanied him to the ground, which was in between Railway Station, Chandigarh and Mauli Jagran. Two broken teeth were lying near the dead body. A pair of *chappal* was also lying there. Blood was also scattered on earth near the dead body. These were taken into possession. He joined Prem Singh Malik, SHO, on 14.06.2002 in connection with investigation of the case. SHO Prem Singh Malik received a secret information regarding missing of a person. He went to a Cement Store, Baltana. One Inder Bahadur met SHO Prem Singh Malik. He disclosed that on 11.06.2002, Ram Avtar came to him along with Binda. He disclosed the address of Ram Avtar to the police. The police went to village Baltana. One Kamlesh met the police party. She informed the police that her husband Ram Avtar had gone missing since 11.06.2002. He took Kamlesh to the hospital for identification of the body. While SHO Prem Singh Malik was sitting at Police Post Mauli Jagran, one Mehboob brought accused Binda Lal to the Police Post along with a rickshaw rehri. Mehboob informed the police that the accused had made confession regarding the murder of Ram Avtar before him. A *danda* was tied with the rickshaw rehri and blood was noticed on the same. The blood spots on the pant and shirt worn by the accused appeared to have been washed. However, impressions thereupon were visible. Pant

and shirt of the accused were taken into possession.

12. PW.12 Inspector Prem Singh Malik is the Investigating Officer. He deposed that M.L. Verma informed him on 12.06.2002 that an unidentified dead body was lying in open place near Mauli Jagran Colony. FIR Ex.P1 was registered. The photographer was summoned. Photographs were taken. The blood stained earth was put into a tin container and taken into possession. Two broken teeth and a pair of *chappal* were also taken into possession. On 14.06.2002, he was present at Police Station Mauli Jagran. A secret informer informed that one Ram Avtar, employee of Lakshmi Store, was missing since 11.06.2002. He went to Lakshmi Store, Baltana. One Inder Bahadur, an employee of Lakshmi Store, met him. Inder Bahadur told him that on 11.06.2002 at about 8.30 PM, one Binda Lal had taken Ram Avtar with him on a cycle rehra. Before leaving, Ram Avtar had taken a pair of *chappal* from Inder Bahadur. He went to House No. 69, Hem Vihar, Baltana. He took Kamlesh to General Hospital, Sector 16, Chandigarh. She identified the dead body of Ram Avtar. Her statement Ex.P48 was recorded. On 14.06.2002, PW Mehboob brought accused Binda Lal at Police Post Mauli Jagran to tell that Binda Lal had confessed before him of having killed Ram Avtar. Accused took them to the place, from where the dead body had been recovered. The police party and the accused returned to Police Post Mauli Jagran. The tricycle cart is Ex.P49. The weapon of offence is Ex.P10. The accused was arrested on 14.06.2002. In his cross-examination, he deposed that the accused came to the Police Station at about 10.30 AM. He noticed one injury on the head of the dead body and some injuries on the face.

13. DW.1 Narinder Singh produced the file of Sessions Case No. 26 of 22.07.2003, titled State Vs. Om Parkash alias Saini and others. Mehboob Khan was cited as a witness in this case. In his cross-examination, he admitted that in the case titled State Vs. Om Parkash, Mehboob Khan had not supported the prosecution version and was declared hostile.

14. DW.2 HC Jagpal Ram brought the FIR register of Police Station of Sector 19 for the year 2003.

15. The Chemical Examiner report is Ex.P35. According to it, aluminium phosphide, a pesticide, was found in the contents of exhibits I and III. Phosphine, a constituent of aluminium phosphide, was found in the contents of exhibits II and IV. No poison was detected in the contents of exhibit V.

16. The Central Forensic Science Laboratory report is Ex.P49. According to it, blood of human origin was detected from exhibits 1 (twigs and earth material), 2 (two pieces of teeth), 3 (pair of blue rubber *chappals*), 4a (full shirt of cream colour with thin brown strips), 5 (triangular cycle seat cover of greenish black colour), 7 (small vial containing red coloured fluid), 8a (underwear), 8b (banian), 8c (brown T-shirt), 8d (white shirt) and 8e (brown pant). However, grouping was not confirmed on exhibits 1, 2 and 4a.

17. The dead body was seen by PW.1 M.L. Verma. FIR Ex.P1 was registered at his instance. In his report, he only mentioned that he saw the dead body of a young person of the age group of 25-30 years lying in the jungle. His face was injured with some heavy thing and face could not be identified. However, in his examination-in-chief, while appearing as PW.1,

he deposed that there was a head injury on the dead body and jaw was broken and pushed inside.

18. The case of the prosecution is that the appellant had illicit relations with PW.3 Kamlesh, which led to the murder of Ram Avtar. PW.3 Kamlesh is the wife of deceased Ram Avtar. She has not supported the case of the prosecution. According to her, her husband had some acquaintance with the appellant. He had no conversation with her. She was declared hostile.

19. The prosecution has placed strong reliance on the extra-judicial confession made by the appellant before PW.4 Mehboob. PW.4 Mehboob is only a barber. There was no occasion for the appellant to go to him and confess before him. He was not a man of authority. According to him, the appellant had brought rehri and *danda* was lying in the rehri. It was stained with blood. It is not believable that the weapon of offence, i.e. *danda*, would be kept by the appellant for three-four days.

20. The case of the prosecution is also that on 14.06.2002, the police had received secret information that one Ram Avtar, an employee of Lakshmi Store, Baltana, was missing since 11.06.2002. PW.12 Inspector Prem Singh Malik went to Lakshmi Store, Baltana. One Inder Bahadur, an employee of Lakshmi Store, met him. He was told by Inder Bahadur that on 11.06.2002 at about 8.30 PM, one Binda Lal had taken Ram Avtar with him on a cycle rehri. Before leaving, Ram Avtar had taken a pair of *chappal* from Inder Bahadur. Inder Bahadur has been introduced to prove the case of the prosecution on the theory of 'last seen together'. However, the fact of the matter is that Inder Bahadur was never examined by the prosecution.

21. The cause of death, though according to PW.13 Dr. Sukhdev Singh, was the head injury along with shock and haemorrhage, but the poison was also detected in the viscera, as per the Chemical Examiner report Ex.P35. The detection of poison in the viscera has not been explained by the prosecution.

22. The case of the prosecution is also that the appellant had taken the deceased by offering him liquor and thereafter, the appellant hit on his head with wooden log. However, no alcohol was found in the Chemical Examiner report.

23. The prosecution has also failed to prove that the appellant had illicit relations with PW.3 Kamlesh, wife of the deceased. PW.3 Kamlesh did not support the case of the prosecution in entirety and was declared hostile.

24. The statement of PW.4 Mehboob does not inspire confidence. There was no occasion for the appellant to confess before him, who was almost a stranger. The prosecution has also failed to prove the theory of 'last seen together'. PW.12 Inspector Prem Singh Malik deposed that he had gone to the shop, where the deceased was working. Inder Bahadur told him that he had seen the appellant with the deceased on 11.06.2002 at about 8.30 PM. However, Inder Bahadur was not examined by the prosecution.

25. The prosecution has failed to prove its case against appellant beyond reasonable doubt.

26. Accordingly, the appeal is allowed. The impugned judgment and order dated 04.05.2005 rendered by the learned trial court are set aside. The appellant is acquitted of the charge framed against him. His sentence

was suspended vide order dated 16.10.2008. His bail bond and surety bond are discharged.

(RAJIV SHARMA)
JUDGE

February 19, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes