

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2052-MA of 2018(O&M)
Date of Decision:21.10.2022

Manoj Kumar

.....Applicant-appellant

Versus

State of Haryana and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr.Satbir Rathore, Advocate
for the applicant.

LISA GILL, J(Oral).

Complainant in FIR No. 407 dated 06.10.2015, under Sections 302/34 IPC, registered at Police Station Tosham, District Bhiwani, seeks leave to appeal against judgment dated 12.07.2018, passed by learned Additional District Sessions Judge, Bhiwani, whereby accused-respondent no.2 has been acquitted of the charge framed against him under Section 302 IPC.

Brief facts necessary for adjudication of the matter are that on 06.10.2015, SI Rajbir, PW-16 along with other police officials was present at Kairu Chowk, when a telephonic message was received that dead body of Virender son of Abhey Ram was found lying in a vacant plot of one Raghubir with an Angochha (*Parna/cloth*) tied around his neck. SI Rajbir along with accompanying staff reached at the spot while informing the team for inspection of the crime scene. Crime Scene Visit report, Ex.PW3/A was prepared. No injury was found on the dead body. Photographs were taken by SI Rajbir on his mobile phone. Site plan, Ex.PW4/A was prepared.

Statement of Manoj Kumar-PW-7, brother of the deceased was recorded on

the spot. Manoj Kumar stated that, they were four (04) siblings i.e., three brothers and one sister, all of whom were married. It is stated that eldest was their sister and at the third number was Virender Kumar (deceased), who was a teacher at Government School, Mansarbas. Manoj Kumar further stated that on 06.10.2015, his brother Virender Kumar had taken leave from school and at about 10/ 10.30. a.m., his brother had come to the village. Complainant stated that he later came to know that Virender Kumar along with Jagdish son of Bhall Singh, caste Chamar and Ram Kumar son of Chandgi, caste Chamar, resident of village Mansarbas, were together consuming liquor at about 12.30 / 1.00.p.m. After that Kalu son of Ram Kumar son of Chandgi was also seen consuming liquor at about 1.30/2.00 p.m. It is stated that Manoj Kumar came to know that dead body of his brother Virender with an *Angochha (Parna/cloth)* tied around his neck was found lying with his face downward in the vacant plot of Raghbir son of Rameshwar caste Jatt. Manoj Kumar expressed a suspicion that someone had killed his brother by tying an *Angochha (Parna/cloth)* tightly around his brother's neck. He further stated that he sent the intimation telephonically to the Police Chowki on which police had arrived at the spot. Manoj Kumar further stated that he had identified the body of his brother and that his brother's death had been caused by someone with the white coloured *Angochha (Parna/cloth)* tightened around his neck. He further stated that accused be found out and legal action be taken against them.

Formal FIR No. 407 dated 06.10.2015, Ex.P-10/A was registered on the basis of statement of Manoj son of Abey Ram, caste Jaat . Inquest report under Section 174 of the Code of Criminal Procedure (for short 'Cr.P.C.') Ex.PW6/A was prepared. Postmortem was conducted on 07.10.2015 at Civil Hospital, Bhiwani. Three parcels containing viscera,

clothes and angochha/ cloth were taken in police custody vide recovery memo Ex.PW9/A. As per postmortem report, Ex.P-14/A, cause of death is stated to be Asphyxia, due to strangulation. As per Chemical Examiner Report dated 15.03.2016, Ex.PX, Ethyl alcohol was found present in the lungs, liver, spleen, kidney and to the extent of 23.0 mg % in the blood from the heart of the deceased. As per the brief history of the case as stated in the Crime Scene Visit Report, it is mentioned that SI Rajbir stated that Virender Kumar aged 40 years son of Abhey Ram resident of Mansarbas was found dead on the roadside in the village on 06.10.2015. Some acquaintance informed the police. Place of occurrence was near the open plot of Raghubir son of Rameshwar on the land lying around along the road and the vicinity was full of vegetation. *Angochha/Parna* was found tied around the neck of the deceased firmly with the knot on the backside of the neck. Report under Section 173 Cr.P.C., was presented after completion of investigation.

The case was committed to the Court of Sessions vide commitment order dated 07.01.2016. Charge under Section 302/34 IPC was framed against respondent no.2 on 30.03.2016, to which he pleaded not guilty and claimed trial. As many as seventeen witnesses were examined by the prosecution to buttress its case.

Statement of accused under Section 313 Cr.P.C was recorded, wherein he while denying all the allegations levelled by the prosecution, pleaded innocence and false implication in this case. Respondent no.2 stated that he had been falsely implicated. The deceased was stated to be a drunkard person who would often fall in the street under the influence of liquor and was also alleged to be a drug addict and that he died due to consumption of excessive liquor. Respondent no.2 stated that he had no concern or connection with the case. Four witnesses were examined in

defence by the accused.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the prosecution had failed to prove its case against respondent no.2 beyond reasonable doubt, thereby acquitting the accused of the charges framed against him. It was held that the present being a case of circumstantial evidence, the prosecution was unable to prove the chain of circumstances conclusively, so as to prove the commission of the offence by respondent no.2.

Aggrieved therefrom, present applicant/complainant seeks leave to appeal against impugned judgement dated 12.07.2018, passed by learned Additional District Sessions Judge, Bhiwani.

Learned counsel for the applicant submits that evidence on record clearly points to the guilt of respondent no.2. Accused, it is stated was last seen with the deceased as per evidence of PW-5 and 6 namely Ram Kumar and Balbir. Furthermore, accused has himself confessed to commission of the crime, which is evident from his extra judicial confession before PW-11-Ranbir Singh as well as his confession while in police custody. Learned counsel further submits that pursuant to his confession in police custody, demarcation of place of occurrence was duly carried out. Therefore, evidentiary value of the confession has been wrongly ignored by the learned trial Court. It is further contended that the motive behind murder of the complainant's brother is duly proved. It is thus prayed that leave to appeal against judgment dated 12.07.2018, passed by learned Additional District Sessions Judge, Bhiwani, be allowed and respondent no.2 be convicted for the offence punishable under Section 302 IPC and punished accordingly.

We have heard learned counsel for the applicant and have gone

through the record with his able assistance.

It is a matter of record that the prosecution case rests entirely on circumstantial evidence. It is a settled position of law that in order to bring home the case against an accused solely on the basis of circumstantial evidence, link in the chain of circumstances has to be completed and the circumstances must point indisputably to the guilt of the accused and there cannot be any reasonable ground for a conclusion consistent with the innocence of the accused. Reference in this respect can gainfully be made to the judgment of Hon'ble Supreme Court in **Sharad Birdhi Chand Sarda vs State Of Maharashtra, 1984 AIR 1622** and **Subramanya Vs. State of Karnataka, Criminal Appeal no. 242 of 2022, decided on 13.10.2022** and **Ravinder Singh @ Kaku Vs. State of Punjab, Criminal Appeal No. 1307 of 2019, decided on 04.05.2022**. The Hon'ble Supreme Court in **Ravinder Singh @ Kaku's** case (supra) has held as under:-

“Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [[See Hukam Singh v. State of Rajasthan AIR \(1977 SC 1063\)](#); [Eradu and Ors. v. State of Hyderabad \(AIR 1956 SC 316\)](#); [Earabhadrapa @ Krishnappa v. State of Karnataka \(AIR 1983 SC 446\)](#); [State of U.P. v. Sukhbasi and Ors. \(AIR 1985 SC 1224\)](#); [Balwinder Singh @ Dalbir Singh v. State of Punjab \(AIR 1987 SC 350\)](#); [Ashok Kumar Chatterjee v. State of M.P. \(AIR 1989 SC 1890\)](#)] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [In Bhagat](#)

[Ram v. State of Punjab](#) (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt. We may also make a reference to a decision of this Court in [C. Chenga Reddy and Ors. v. State of A.P.](#) (1996) 10 SCC 193, wherein it has been observed that:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....”

[Emphasis supplied]”

The Hon’ble Supreme Court in [Subramanya’s](#) case ([supra](#)) after considering its earlier judgment of [Sharad Birdhi Chand Sarda’s](#) case ([supra](#)) held as under:-

“Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.”

Having considered and carefully scrutinizing the evidence on record, facts and circumstances of the case, we find that the circumstantial evidence on record does not conclusively prove the commission of offence of murder of Virender Kumar by respondent no.2. It cannot be said that the circumstances in the present case are of conclusive nature and consistent only with the hypothesis of guilt of the accused. This is so for the reasons as discussed under:-

LAST SEEN EVIDENCE.

Reliance has been placed by the prosecution on the evidence of PW-5-Ram Kumar and PW-6 Balbir to prove that the deceased was last seen in the company of respondent no.2. It is relevant to note that both Balbir and Ram Kumar are residents of the same village as of the deceased, with Balbir claiming to be related to the deceased in the village brotherhood. PW-12, IO Desh Raj has duly stated that PW-6 Balbir belongs to the family of the deceased. Statements of both these witnesses were admittedly recorded on 07.10.2015 i.e., a day after the alleged occurrence. There is no explanation as to why said witnesses did not come forward immediately for recording of their statements. It is relevant to note that none of these witnesses i.e. PW-5 and PW-6 disclosed such events on 06.10.2015 either to the family of the deceased or the police despite the fact that the police remained in the village for about three to four hours on 06.10.2015. Furthermore, there are material contradictions which fatally dent the credibility of these witnesses.

PW-5-Ram Kumar stated that on 06.10.2015 at about 9.00.a.m., he met with deceased-Virender and consumed liquor with him. It is stated that Virender then gave Rs. 80/- to Ram Kumar for purchase of liquor, on which he brought a cold drink and liquor and at that time respondent no.2 came at the spot and told Ram Kumar to leave the place. It is stated that Ram

Kumar left for his residence at 12.30/1.00 p.m.

PW-6-Balbir stated that on 06.10.2015 at about 11/12.00 noon, when he was coming towards his fields, he saw respondent no.2 and the deceased sitting at the plot of Raghbir and some altercation was taking place between them regarding labour charges. Respondent no.2, it is stated was asserting that he would take the same but the deceased refused to give the labour charges. PW-6 stated that on hearing them, he went near them but they asked him to leave from there and at that time they were under the influence of liquor. It is further stated that PW-6 went to his fields and returned home at about 8/8.30 p.m., and then came to know about the death of Virender and that his statement was recorded by the police on 07.10.2015. PW-6 further stated that he had gone to the police station on 10.10.2015 and in his presence the accused was interrogated and during investigation accused suffered a disclosure statement, Ex.PW6/A regarding his involvement in the matter. Respondent no.2, is then stated to have demarcated the place of occurrence on 13.10.2015 and prepared the demarcation memo Ex.PW6/B. Pursuant to said disclosure statement, respondent no.2 is stated to have got recovered mobile phone along with two sim cards which were taken in police possession vide recovery memo Ex.PW6/C.

It is further to be noted that PW-5-Ram Kumar has stated that he was having liquor with the deceased since 9.00 a.m and thereafter he had gone to purchase liquor at the asking of the deceased and after he came back with the cold drink and liquor, respondent no.2 came at the spot. PW-5 stated that he thereafter left the spot at about 12.30/ 1.00 p.m at the asking of respondent no.2. At the same time PW-6 claimed that he saw the deceased along with respondent no.2 sitting on the plot of Raghbir at about 11/12

noon with some altercation going on between them regarding labour charges. Timeline given by both these witnesses is discrepant. Inasmuch as perusal of both the statements reveals that it is not possible that PW-6 would have seen only two persons present at 11 or 12 noon because as per PW-5, respondent no.2/accused came to the spot after Ram Kumar had brought cold drink and liquor and that PW-5-Ram Kumar left at 12.30/ 1.00 p.m. Furthermore, PW-5-Ram Kumar specifically stated that no altercation of any kind took place in his presence between the deceased and respondent no.2.

It is relevant to note at this stage that there is a discrepancy regarding the visibility of the spot in question as well. PW-6 Balbir has stated that while he was going to his fields he saw the accused and the deceased sitting in the plot of Raghubir. However, as per statement of PW-16, SI Rajbir, the road was a busy one and the spot where the dead body was lying was not visible as several bushes were present near the spot. As per the crime scene visit report, the vicinity was full of vegetation and as per site plan, Ex.PW4/A, existence of a number of *kikkar* trees was found at the spot of occurrence. As per crime scene visit report, no disturbance was perceivable at the spot by the team.

It is pertinent to note that the complainant stated that deceased along with PW-5 Ram Kumar and one Jagdish were consuming liquor on 06.10.2015 at about 12.30/ 1.00 p.m. For reasons best known to the prosecution, said Jagdish son of Bhall Singh has not been examined, neither his statement under Section 161 Cr.P.C., recorded by the police authorities.

Learned trial Court has thus rightly discarded the testimonies of PW-5 and PW-6, as they do not inspire any confidence. Thus, it cannot be proved on the basis of evidence on record that the deceased was last seen in the company of respondent no.2.

EXTRA JUDICIAL CONFESSION AND CONFESSIONAL STATEMENT OF RESPONDENT NO.2 IN POLICE CUSTODY:

It was vehemently argued by learned counsel for the applicant that respondent no.2 has himself confessed to the commission of the crime before PW-11 and while in police custody. However, this argument is rejected being devoid of any merit. It is the case of the prosecution that respondent no.2 went to the residence of PW-11 and confessed his guilt before him on 07.10.2015. PW-11 stated that when he was sitting in the Verandah of his house on 07.10.2015 at about 7.00 a.m., accused came to him and stated that he had committed wrong as on 06.10.2015 at about 2.00 p.m., he firstly gave a fist blow on the chest of the deceased and thereafter strangled him with the help of Parna. It is a matter of record that the accused was arrested on 09.10.2015. PW-11 has admitted that he belongs to the same caste as the deceased and deceased was his brother-in-law in 'village relation'. No plausible reason is forthcoming in the testimony of PW-11 as to why the accused would confess his guilt before him. PW-11 is not stated to be a Nambardar, Panch or Sarpanch of the village or in any way related to the accused which would have persuaded the accused to confess his guilt before him. Though, merely because PW-11 may be related to the deceased by itself may not be a reason to discard his testimony, but in the given facts and circumstances his testimony does not inspire any confidence. It is to be noted that PW-11 stated that accused approached him on 07.10.2015 at 7.00 a.m and confessed to his guilt. Statement of PW-11 under Section 161 Cr.P.C was however recorded on 08.10.2015 at 8.30 a.m. There is no explanation as to why PW-11 did not immediately approach the police authorities on having received such information. It is opposed to all probability that PW-11 admittedly being a relative of the deceased would

have kept this information with himself for 24 hours without disclosing the same either to the other family members of the deceased or to the police.

It is a settled position that extra judicial confession is of weak evidentiary value and has to be examined with care and caution and until and unless it inspires confidence of the Court, the same cannot be relied upon. In the present case, testimony of PW-11 does not inspire confidence of the Court.

Insofar as the confessional statement of the accused before the police is concerned, it cannot be denied that in view of Section 25 of the Indian Evidence Act, the same is not admissible until and unless it leads to discovery of facts in terms of Section 27 of the Indian Evidence Act. In the present case, there is nothing on record which points to discovery of any fact on the basis of the said confessional statements. Argument that demarcation of place of occurrence was carried out by the accused pursuant to his disclosure statement thereby making the confessional statement worthy of reliance is devoid of merit and accordingly rejected. This is so for the reasons that place of occurrence was admittedly within the knowledge of the police, complainant and other villagers much prior to the demarcation which was carried out purportedly at the instance of the accused.

Learned counsel for the applicant further submits that call detail record of the accused as collected by the prosecution agency and produced as Ex.PW8/B indicate the complicity of the accused. This argument is also rejected being devoid of any merit for the reason that first and foremost the call details record has not been proved on record in accordance with law. Furthermore, the attempt to connect the accused with the crime through the said call details record only with a reference to the confession of the accused in police custody, Ex.PW6/A is a futile attempt. Reference has been made to

confession, Ex.PW6/A, wherein the accused it is submitted has stated that at about 3/ 3.30 p.m., the accused had revisited the scene of occurrence to check whether Master Virender Kumar was alive or not and he found that Virender was lying on the ground as the accused had left him and on this the accused is alleged to have called the Sarpanch namely Dalbir of village Mansarbas from his mobile. Mobile number, purportedly of the said Sarpanch is mentioned in the said statement. As per the call details record, call on the number as given in the confessional statement is found to have been made at 14.52.27 hours on 06.10.2015.

In our considered opinion, this by itself cannot be sufficient to convict the accused of the crime as charged. It is a matter of record that there is no evidence on record to indicate as to who is the person whom the accused is alleged to have called. No attempt whatsoever was made by the prosecution to prove that the cell phone number in question actually belonged to this Sarpanch. Neither has the prosecution examined the said person/ the Sarpanch to whom the accused is alleged to have called. In-fact PW-12, Inspector Desh Raj has categorically stated that no independent witness including the Sarpanch, Panch of village Mansarbas or any other private person was joined in the investigation. Hence, the prosecution cannot derive any benefit on the basis of so called call detail record.

MOTIVE:

Learned counsel for the applicant had argued that it is proved on record especially with reference to the statement of PW-6 that there was a dispute regarding labour charges between the deceased and respondent no.2. Learned counsel for the applicant is unable to point out any evidence on record to indicate that there was any dispute between the deceased and respondent no.2 in respect to any labour charges. On a pointed query,

learned counsel for the applicant, candidly stated that there is no evidence on record to indicate that respondent no.2 had ever carried out labour work for the deceased at any point of time.

Mere bald statement of PW-6 that there was a dispute regarding labour charges between the deceased and respondent no.2, is not sufficient to prove the motive for commission of the offence. Furthermore, as has been held by the Hon'ble Supreme Court in **Subramanya's** case (supra) that even if it is believed that the accused had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof that the person concerned was the author of the crime. In the given factual matrix, the prosecution has indeed failed to prove its case against the accused. Chain of events in this case is not complete and does not conclusively point to the guilt of accused. It is a settled position that suspicion however strong cannot take place of proof of guilt of the accused beyond reasonable doubt.

It is equally well settled that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances with substantial reasons forthcoming thereof and where the impugned judgment of acquittal is clearly perverse, unreasonable with relevant and convincing materials on record ignored unjustifiably by the trial Court. Reference in this regard can gainfully be made to decisions of Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Bacchudas @ Balram and others, 2007(9) SCC 135, Bhagwan Singh Vs. State of M.P, 2003(3) SCC 21 and Mahamad Khan Nathekhan vs. State of Gujarat, (2014) 14 SCC 589.**

In the present case, learned counsel for the applicant is unable to point out any such compelling or substantial grounds which call for interference for setting aside judgment dated 12.07.2018, passed by learned Additional District Sessions Judge, Bhiwani, whereby respondent no.2 has been acquitted of the charges framed against him.

Keeping in view the facts and circumstances as above, leave to appeal is denied and application is accordingly dismissed.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

October 21, 2022.
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.