

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-D-266-2022 (O&M)
Date of Decision: 03.11.2023

Balwinder Singh @ Billa @ BabaAppellant

Versus

State of PunjabRespondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Arshdeep Singh Brar, Legal Aid Counsel,
for the appellant.

Mr. Amit Rana, Sr. Deputy Advocate General, Punjab.

GURVINDER SINGH GILL, J.

1. The appellant assails judgment dated 3.1.2022 passed by learned Sessions Judge, Hoshiarpur vide which the appellant has been held guilty for offences under Sections 302 and 201 IPC in a case arising out of FIR No. 71 dated 24.4.2019 under Sections 302 and 201 IPC registered at Police Station Sadar, Hoshiarpur and has been sentenced as under:

Offence	Imprisonment	Fine	In default of fine
302 IPC	Imprisonment for life	Rs. 20,000/-	R.I. of six months
201 IPC	R.I. for three years	Rs. 5,000/-	R.I. of fifteen days

2. The facts, in nutshell, are that on 24.4.2019 when the complainant Kamal Kumar, Sarpanch of village Jahan Khelan alongwith Sonu, Member Panchayat was proceeding towards village Narra on a scooter, they noticed a dead body of a young man lying wrapped in a jute bag about 15-20 feet

away from the road. The dead body was found to be bearing marks of injuries on neck. The complainant furnished information to the police leading to lodging of the FIR in question.

3. The matter was investigated by the police, during the course of which blood stained earth was taken into possession, rough site plan of the place of recovery was prepared, statements of witnesses were recorded and all other leads were probed. Post-mortem examination of dead body was conducted, as per which the body was found to have sustained as many as 10 injuries including 8 incised wounds, some of which were on head and neck. The cause of death was opined to be respiratory insufficiency due to injury to *trachea* as well as hemorrhage and shock due to injuries to vessels of neck and spinal cord.
4. It is the case of prosecution that during investigation, statement of Phool Chand, Lamberdar was recorded on 27.4.2019 who stated that when he was present near Rai Dhaba on the canal of the village, then he overheard a person known by the name Baba talking with 2-3 other persons to the effect that his daughter Priya who was already married had developed relations with Aman and that said Aman had been residing in his house against his wishes and consequently, he had killed him on 23.4.2019 with the help of a '*datar*' and had thrown away his dead body in the area of village Jahan Khelan. Pursuant to recording of said statement, Balwinder Singh @ Billa @ Baba was arrested on 27.4.2019, who confessed his guilt and suffered a disclosure statement that his daughter Prabhjot Kaur had been married to Kuldeep Singh but said Kuldeep Singh had been harassing and maltreating his daughter and that later said Kuldeep Singh went missing from his house. He further stated that Chiragdeep Sharma, a friend of his

daughter Priya, was residing in his house alongwith his daughter since long. On 22.4.2019, parents of Kuldip Singh had visited his house and complained that Kuldip Singh was not traceable and that complainant's daughter was causing humiliation to them. He further stated that on 23.4.2019 when he returned home after plying auto rickshaw, he came to know that an altercation had taken place between his daughter and Chiragdeep Sharma and on account of the dispute including some monetary dispute, there was exchange of some hot words and Chiragdeep Sharma had left the house. He further stated that later he came to know that Priya and her friend Chiragdeep Sharma had consumed some poison. It is also stated that when he went to the ancestral house of Chiragdeep Sharma, he (Chiragdeep Sharma) started manhandling him and that on account of which he (Balwinder Singh) picked up a '*datar*' lying there and gave repeated blows on the neck and head of Chiragdeep Sharma, due to which he died at the spot and thereafter in the early hours of 24.4.2019, he stacked the dead body in his auto rickshaw and threw it on Narra road.

5. It is the case of prosecution that during the course of investigation, the police recorded statement of one Vinod Kumar on 27.4.2019, who stated that the accused/appellant had confessed his guilt before him.
6. The case of prosecution is further to the effect that pursuant to a disclosure statement made by the appellant Balwinder Singh, he got recovered the auto rickshaw bearing No. PB-07-AS-9995 and also the '*datar*' used in the occurrence. The daughter of the appellant identified the dead body. On 28.4.2019, Daljit Singh father of the deceased also arrived and got his statement recorded. Inquest proceedings were prepared. On 29.4.2019,

blood stained clothes of the accused were also recovered. Statements of witnesses were recorded in terms of Section 161 Cr.PC.

7. Upon conclusion of investigation, a challan was presented in the Court of Area Magistrate. The Area Magistrate committed the matter to the Court of Session. The Court of Session, upon finding sufficient grounds to frame charges against the accused for offences under Sections 302 and 201 IPC accordingly framed charges against the accused on 27.8.2019.
8. The prosecution in order to substantiate its case examined as many as 15 prosecution witnesses. PW-1 Daljit Singh, father of the deceased deposed that his son Chiragdeep Sharma @ Aman had been married to Prabhdeep Kaur @ Priya in the year 2018 and had been residing in the house of his in-laws. He stated that on 28.4.2019, police approached him and he accompanied the police officials to Civil Hospital, Hoshiarpur and identified the dead body of his son Chiragdeep Sharma, who was having deep injuries on his neck and head. He further stated that upon inquiries made by him, he came to know that his son had been murdered by the accused/appellant, who was father-in-law of his son.
9. PW-2 Kamal Kumar, Sarpanch who was the first person to notice the dead body stated about the same. He further stated that he was accompanied by Sonu Panch and that he had informed the police about the said dead body. PW-3 Vinod Kumar before whom the accused had allegedly confessed his guilt stated that he had seen the picture of the dead body in the newspaper and had read the news that it is Balwinder Singh who had committed murder. However, he categorically stated that Balwinder Singh never disclosed anything about his family and that he had never made any

statement to the police. The said witness was declared hostile and was permitted to be cross-examined by the prosecution but nothing substantial could be elicited during the course of his cross-examination. PW-4 Arjun Khanna Draftsman, is a formal witness who proved the site plan Ex.PC. PW-5 Tarlochan Singh, stated that he had purchased an auto rickshaw in the year 2017 from one Kulwinder Singh and had given the same on rent to accused Balwinder Singh on 23.4.2019 and in respect of which Kulwinder Singh had also executed an affidavit.

10. PW-6 Kulwinder Singh deposed that he had purchased auto rickshaw bearing registration No. PB07-AS-9995 in 2017 and had sold off the same to Tarlochan Singh on 11.3.2019. PW-8 Kuldip Singh, Junior Assistant, Driving Test Track, SBS Nagar proved the registration certificate in respect of auto rickshaw bearing registration No. PB07-AS-9995 (Ex.PJ). PW-9 C. Amandeep Sharma is a formal witness pertaining to deposit of blood stained clothes and viscera with the Chemical Examiner and has stated about the same. PW-10 Gurjant Singh stated that he knew Daljit Singh and that his daughter was married to Chiragdeep and that he had identified the dead body of Chiragdeep which was bearing marks of injuries on neck. He stated that upon making inquiries, they came to know from Phool Chand, Lamberdar that the appellant had murdered Chiragdeep. PW-11 HC Gurmaninder Singh is an official witness who had clicked photographs of the place of recovery of dead body, has proved the same. PW-12 MHC Deepak Kumar stated in respect of deposit of the case property with him and regarding handing over of the same to Constable Amandeep Sharma for depositing it in the office of FSL, Kharar. PW-13 Phool Chand is the witness who stated that on 27.4.2019, he had overheard the appellant talk-

ing to 4-5 persons and to the effect that people were naming Balwinder Singh to be responsible for the death of the person whose dead body had been recovered. He further stated that he had disclosed the said fact to the police and also informed the police that Balwinder Singh belonged to his village. PW-14 ASI Satnam Singh who had remained associated with investigation along with Investigating Officer SI Rajesh Kumar has stated in respect of the same and has proved various documents prepared during the course of investigation. PW-15 Inspector Rajesh Arora, who is the Investigating Officer in the present case has stated in detail about the entire investigation conducted in the matter. He further stated that upon conclusion of investigation, challan was presented by Inspector Sukhwinder Singh.

11. Upon closure of prosecution evidence, statement of the accused/appellant has been recorded in terms of Section 313 Cr.P.C., wherein the entire evidence led by the prosecution was put to him to enable him to explain the same, but the appellant denied the entire case of the prosecution in toto and pleaded false implication. The accused, however, did not lead any evidence in his defence.
12. Learned counsel representing the appellant assailed the findings as regards his guilt mainly on the ground that it is a case where there is no eye-witness to the occurrence and that the circumstantial evidence led by the prosecution in the shape of statement of PW-13 Phool Chand and PW-3 Vinod Kumar is insufficient to connect the appellant in any manner with the murder of the deceased. It has been submitted that while the statement of PW-13 Phool Chand is in the nature of hear-say evidence, the other witness upon whom the prosecution places reliance i.e. PW-3 Vinod

Kumar turned hostile and did not prove the *extra-judicial confession* allegedly made by the appellant before him.

13. It has further been submitted that the factum of recovery of a '*datar*' at the instance of the appellant would not be of much significance in the absence of any evidence to show that the appellant had indeed used the said weapon. It has, thus, been submitted that the impugned judgment suffers from serious infirmities and that the charges framed against the accused are far from being substantiated from the sketchy evidence led by prosecution. The learned counsel, thus, prayed for setting aside the impugned judgment and for acquittal of the appellant.
14. Opposing the appeal, the learned State counsel submitted that though it is correct that the case is based on circumstantial evidence but in the present case all the circumstances in respect of which evidence has been collected by the police clearly point towards the guilt of the appellant. It has been submitted that the appellant apparently has been able to win over PW-3 Vinod Kumar before whom the appellant had confessed his guilt but in any case, the testimony of Phool Chand coupled with the factum of recovery of the 'auto-rickshaw' and '*datar*' at the instance of the appellant would fully establish that it is the appellant who had committed the murder of deceased Chiragdeep Sharma.
15. This Court has considered rival submissions addressed before this Court.
16. It is not in dispute that it is a case where there is no eye-witness to the occurrence and the case happens to be based solely on circumstantial evidence. While it is correct that the burden lies heavy on prosecution to establish a case particularly in a case based on circumstantial evidence but

in case the prosecution is able to collect evidence of sterling quality which furnishes sufficient *indicia* towards the guilt of the accused, the charges can be said to be well established.

17. In the present case, the case of prosecution is mainly based on the following evidence :-

- (i) statement of Phool Chand who during the course of investigation had stated that he had overheard the appellant talking to 2-3 persons wherein he admitted having murdered the deceased Chiragdeep Sharma;
- (ii) *extra-judicial confession* of the accused/appellant made before PW-3 Vinod Kumar;
- (iii) recovery of the auto-rickshaw of the deceased as well as the weapon of offence i.e. '*datar*' at the instance of appellant.

18. Each of the above referred evidence is being discussed individually to examine its evidentiary value in the present set of circumstances.

19. The first piece of evidence on which the prosecution relies is in the shape of statement of Phool Chand. A perusal of the identification memo (Ex.PQ) which is duly signed by Phool Chand, Lamberdar (PW-13) would show that Phool Chand Lamberdar had informed that he had seen and heard Balwinder Singh talking to some person on 27.4.2019 and that the person whose dead body had been found on 24.4.2019 had been murdered by said Balwinder Singh. When the aforesaid witness Phool Chand stepped into the witness box as PW-13, he stated to the following effect :-

“I am Lambardar of the village since 2013. I know the accused facing trial in this case. He was residing with his mother and daughter namely Prabhjeet. On 27.4.2019, I was going towards village Allahabad on the road. When I reached near the canal near Rai Dhaba, four/five persons were standing there. They were talking to each other that the dead body which has been recovered from the defence road, people are naming Balwinder Singh in that incident. I disclosed this fact to the police. I was called in the Police Station where Balwinder Singh was already in police custody and the police inquired from me that Balwinder Singh belong to my village and I replied in affirmative. The police had prepared a paper and took my signatures.....”

A perusal of the aforesaid statement would indicate that the knowledge of Phool Chand is in the nature of hear-say evidence and that he had actually overheard some persons naming Balwinder Singh as the murderer. The evidentiary value of such hear-say evidence is rather placed on a very low pedestal and can only be said to be relevant in case where there is other clinching and convincing evidence to a similar effect.

20. The second piece of evidence on which the prosecution relies upon heavily is in the shape of *extra-judicial confession* allegedly made by the accused before one Vinod Kumar. During the course of investigation, the police recorded statement of Vinod Kumar in terms of Section 161 Cr.P.C. wherein he stated that he is an ex-Sarpanch of village Bajwara Kalan, Police Station Sadar, District Hoshiarpur and that on 25.4.2019 while reading newspaper, he came to know that dead body of an unknown young man has been found on the link road leading to village Narra but he could not identify the photograph of the said person. He further stated that on 27.4.2019, when he went to the village, he came to know that the said body was of Chiragdeep Sharma who had illicit relations with daughter of Balwinder Singh @ Billa @ Baba. He further stated that Balwinder Singh had spoken to him several times about the said illicit relations and that

Chiragdeep Sharma had been fighting with him. He stated that he was shocked that Chiragdeep Sharma has been done to death by Balwinder Singh. However, when the aforesaid witness Vinod Kumar (PW-3) stepped into the witness box, he did not support the case of the prosecution at all and was declared hostile. Nothing could be elicited during his cross-examination so as to prove that the appellant had indeed confessed his guilt before him. As such, the appellant cannot derive any advantage from the said statement of PW-3 Vinod Kumar.

21. The third piece of evidence is in the shape of recovery of the auto-rickshaw and the '*datar*' stated to have been recovered at the instance of the appellant. In terms of provisions of Section 27 of the Evidence Act, it is only the factum of recovery of the articles which can be taken into account and the statement made, if any, while getting the articles recovered which is to the effect of admission of guilt is to be discarded. The recovery of auto rickshaw on its own cannot be said to be an incriminating piece of evidence. Though, the factum of recovery of the '*datar*' at the instance of the appellant can be said to be relevant fact, particularly when the same was found to be sustained with human blood but apart from the fact that there is nothing on record to show that the blood was of the deceased which could have been established by blood group matching, there is no other evidence to show that the weapon in question had been used by the appellant for committing murder of deceased. It may here be mentioned that though even the cardigan of the appellant with which the appellant had wiped off the blood from the '*datar*' was stated to be having blood stains but as already stated above, there is nothing on record either to show that the blood stain found on the '*datar*' and on the cardigan were of the same

blood group or that the same matched with the blood group of the deceased Chiragdeep Sharma.

22. Since the entire case of the prosecution rests solely on circumstantial evidence, the law postulates two-fold requirements before reliance can be placed upon the same :

- (i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.
- (ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

23. Hon'ble Apex Court in 2023(3) RCR (Criminal) 498 State of Punjab vs. Kewal Krishan reiterated the settled principles as regards admissibility and value of circumstantial evidence as follows :-

"17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence."

24. When the evidence led by prosecution, as referred above is examined in light of ratio of above referred judgment, the same falls grossly short to meet the standards prescribed for establishing a case where there is no eye-witness to the occurrence and the case is based on circumstantial evidence only. In these circumstances, we find that the findings of guilt as recorded by the trial Court cannot sustain and deserve to be set aside.

25. Consequently, we set aside judgment dated 3.1.2022 passed by the learned trial Court and acquit the appellant Balwinder Singh of the charges framed against him by granting him benefit of doubt. He shall be set at liberty forthwith, if not required in any other case.
26. Pending application, if any, stands disposed of as well.

(GURVINDER SINGH GILL)
JUDGE

03.11.2023
kamal

(GURBIR SINGH)
JUDGE

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