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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-669-DBA-2003
Reserved on: 01.08.2024
Date of decision: 07.08.2024

STATE OF PUNJAB ...Appellant

Versus

KARNAIL SINGH AND ORS. ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. Tarun, Advocate (Amicus Curiae)
for the respondents.

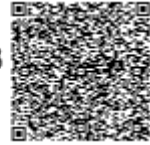
SURESHWAR THAKUR, J.

1. The instant appeal is directed by the State of Punjab, against the verdict drawn on 07.01.2003, upon Sessions Case No. 84 of 07.12.2000, by the learned Sessions Judge, Kapurthala, wherethrough in respect of charges drawn for offences punishable under Sections 302/34 and 201 of the IPC, he made a verdict of acquittal qua all the accused.

FACTUAL BACKGROUND

2. The prosecution story becomes embodied in appeal/FIR, to which Ex.PB/2 is assigned, therein, the complainant Yashpal son of Tilak Raj has made narrations that he alongwith his father Tilak Raj was running a jewellery shop at Bansawala Bazar. Earlier his father Tilak Raj had purchased a plot at

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Nangal Colony, Phagwara. His father had executed an agreement to sell qua the said plot with one Karnail Singh for a consideration of Rs. 1,90,000/-. On 07.08.2000, accused Karnail Singh and Kuldip Singh came to their house on cycles and took away his father Tilak Raj with them on the pretext that they will pay the entire sale consideration to him but his father did not return till the next morning. The complainant went to the house of Karnail Singh for enquiry but Karnail Singh told that his father had already gone at night. The complainant alleged that he had identified the dead body of his father from the photograph published in the newspaper, which was lying in the mortuary of Civil Hospital, Phagwara. The complainant made allegations that his father had been murdered by Karnail Singh and Kuldip Singh for non payment of money.

INVESTIGATION PROCEEDINGS.

3. On the basis of the said statement, FIR was registered. On completion of the investigation and necessary formalities, the challan against the accused was presented before the learned Committal Court.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, therefore, the learned committal Court, vide order dated 25.11.2000, committed the case for trial, to the Court of the learned Sessions Judge, Kapurthala.

TRIAL COURT PROCEEDINGS.

5. On finding a *prima facie* case, charge under Sections 302/34 and 201 of the IPC became framed, against the accused, and, to which they pleaded not guilty, and, claimed trial.

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6. In support of the prosecution case, the prosecution examined twelve witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Sessions Judge, Kapurthala, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in their defence and closed the defence evidence.

7. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Sessions Judge, Kapurthala, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL.

8. The learned counsel for the State, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

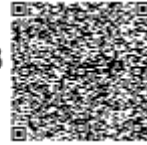
SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

9. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

10. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur, in the impugned judgment of acquittal.

Circumstantial evidence based case.

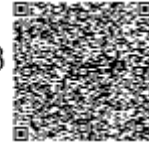
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*“20. Thus from the statement of PW1 Yashpal in examination-in-chief, it is clear that he was present in the house on 7-8-2000 at about 4/4-30 p.m. when Karnail Singh and Kuldip Singh came there and took Tilak Raj with them but Tilak Raj did not come back and thus he enquired from Karnail Singh who told that Tilak Raj had gone to his house on that day. Thus he kept waiting due to the fact that his father used to some time go to Yamuna Nagar and that he had suspicion against the accused persons. **It is note worthy that PW1 Yashpal admitted in cross-examination that he has not made any report to the police on 7th to 10th August, 2000 regarding missing of his father. He admitted that he had identified the dead body of his father on 10-8-2000 from the photograph in the newspaper and thereafter, he went to the civil hospital and recognized the dead body but he did not lodge the report that accused Karnail Singh and Kuldip Singh had taken away his father on the bicycle. The plot which was agreed to be sold to them is in occupation of Karnail Singh as tenant. He also stated that nobody has told him about the assailants of his father. He also made it clear that he did not make any enquiry to persue his father on the ground that his father used to go to his relations and stay there for a week. Thus till the identification of the dead body on 10-8-2000, PW-1 Yashpal was not definite as to who was the assailant of his father, nor, he disclosed the names of the assailants to any body but he had some suspicion against the accused persons. This witness also made it clear that he does not know father's name of Karnail Singh and Kuldip Singh, nor, disclosed father's names of accused Karnail Singh and Kuldip Singh to the police but father's names of the accused are mentioned in the FIR. Therefore, till the lodging of the FIR with the police, PW1 Yashpal was not certain that who was assailant of his father.***

21. PW-2 is Nirmala Rani widow of Tilak Raj deceased, who told that on 3-8-2000, Karnail Singh accused came to her house. He

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*used to reside in the house of her husband on rent. He came on 3-8-2000 in their house at 10 a.m. and told that some guests had come from Yamuna Nagar. Karnail Singh had enquired about the name of her father-in-law and she told him the father-in-law's name as Chuni Lal and thereafter, the accused left the said place. She stated in cross-examination that she did not enquire from the accused that for what purpose, the name of her father-in-law is being enquired. She also stated that she does not know if her husband had gone to Karnail Singh for knowing the purpose for which his father's name has been enquired, nor, this fact has been told to the police. **So far as the fact told by Yashpal that Tilak Raj has gone with the accused Karnail Singh and Kuldip Singh is concerned. PW2 Nirmala Rani stated that her husband left the house 2-3 days prior to the occurrence as he used to meet his relations at Yamuna Nagar and used to stay there for 2-3 days in a week. She also stated that her husband was in the house on the day when Karnail Singh enquired about the father- in-law's name. She has not stated on oath that Karnail Singh and Kuldip Singh had taken her husband Tilak Raj on 8-10-2000 at about 4/4-30 P.M. as disclosed by PW1 Yashpal. Therefore, the version put forth by PW1 Yashpal has not been corroborated by PW2 Nirmala Rani widow of Tilak Raj but she has unfolded the story that Karnail Singh had come to her house to enquire about her father-in-law's name and that she is not the last seen witness.***

22. PW-5 Balbir Singh son of Atma Singh was also a material witness, who stated that he does not know Karnail Singh and Kuldip Singh and they are not the accused now present in the Court. **He stated that on 7-8-2000, at about 10 pm. he was coming from the village on a scooter and when he reached near the railway crossing, he saw three clean shaven persons coming on scooter, whose names, he could not disclose. Tilak Raj was sitting in between two persons. He also stated that the accused persons present in the court are not those persons. Thus he was declared**

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hostile. The learned Public Prosecutor has cross-examined him at length but he could not extract any favourable material to the prosecution.

23. xxxx xxxx xxxx

24. xxxx xxxx xxxx

25. It is note worthy that the accused persons allegedly made the extra judicial confession before SI Lakhwinder Singh but the confession made by the accused during the investigation of the case before the police is in-admissible. A court question has been put to the witness that what is the reason for not producing the accused before the Judicial Magistrate for recording his statement under section 164 Cr.PC but this witness failed to give any explanation. Further more, the recovery of the alleged cycles does not connect the accused persons with the commission of the crime.

Inferences of this Court.

11. The primary reason for negating the prosecution story, stems from the fact that the complainant PW-1 Yashpal, never lodged any report with the police regarding missing of his father from 07.08.2000 till 10.08.2000. However, only after his identifying the dead body on 10.08.2000, that PW-1 Yashpal, but only on the basis of suspicion, thus made a complaint to the police that his father had been murdered by the accused persons. Furthermore, even the version put forth by the complainant, that Karnail Singh and Kuldip Singh, had taken his father on 07.10.2000, but also comes under a cloud of grave suspicion, inasmuch as froms,

- a) At the time of recognizing the dead body of the deceased in the mortuary, his not stating that accused Karnail Singh and Kuldip Singh had taken away his father on the bicycle, thereby the subsequent thereto previous statement made to the police and also

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the testification rendering corroboration thereto made before the learned trial Judge, but appears to be a sequel of sheer concoction and pre-meditation and to which no credence can be assigned.

b) Since PW-2 – Nirmala Rani, the widow of the deceased has omitted to state the said fact in her previous statement recorded before the police and/or in her testification rendered before the learned trial Court concerned, thereby even the said infirm testification rendered by PW-1-Yashpal, in respect of his last seeing the deceased and accused together, but has not been lent any credit worthy corroboration. Resultantly thereby too, the propagation by the prosecution that the accused and the deceased were last seen together rather becomes amenable to be of no evidentiary worth.

12. Be that as it may, since apart from the above witnesses, the prosecution also depended upon the testification of PW-5, one Balbir Singh son of Atma Singh to prove the incriminatory link of last seeing together of the accused and the deceased. However, when in his testification, he made a categorical echoing that the accused persons present in the Court rather are not those persons whom he had seen together with the deceased. Resultantly thereby, the dependence made by the prosecution, thus on the testification of PW-5, is an ill made reliance thereons.

13. The prosecution also depended upon a purported extra judicial confession made by the accused. However, even the said made extra judicial confession is unworthy of any reliance becoming placed thereons. The reason for forming the above conclusion ensues from the factum that the said purported

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before their friend or confidante but became made before investigating officer SI Lakhwinder Singh, who thus obviously cannot be construed to be either a friend or the confidante of the accused. Resultantly therebys the said made extra judicial confession by the accused to SI Lakhwinder Singh, naturally does not carry any evidentiary vigor nor thereons any finding of guilt can be recorded against the accused.

14. In addition, the mere recovery of the alleged cycles from the accused does not connect them with the commission of the crime.

FINAL ORDER OF THIS COURT.

15. In consequence, there is no merit in the appeal, and, is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

16. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

17. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

07.08.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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