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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- 24.05.2024
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Balvir Singh

....Appellant

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Raman Sharma, Advocate
Amicus Curiae for the applicant/appellant.

AMARJOT BHATTI, J.

1. Applicant/Appellant/Complainant Balvir Singh has filed present application under Section 378(4) of Code of Criminal Procedure seeking leave to appeal against judgment dated 21.04.2016 passed by learned Sessions Judge, Sangrur in Sessions Case bearing No. 214 of 23.12.2015, title "State Vs. Sarabjeet Kaur and others", acquitting Sarabjeet Kaur, Manpreet Singh alias Mani and Lakhvir Singh alias Lakhi accused/respondents No. 2 to 4 respectively of the charges against them.

2. Brief facts as per prosecution case are that on 26.08.2015, during patrol duty, Inspector Sukhminder Singh along with other police officials was present at Bus Stand of village Bassi Arkh where complainant Balvir Singh met police party and got recorded his



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statement to the effect that his sister Raj Kaur was married with Mohinderpal Singh son of Jagan Singh of village Kahangarh and were residing in Patran. They are blessed with five daughters and a son. His brother-in-law Mohinderpal Singh had rented his house situated in Sunder Basti Patran to accused Sarabjeet Kaur. Mohinderpal Singh used to visit her for the purpose of collecting rent and they developed illicit relationship. Due to said relationship, there used to remain dispute between Mohinderpal Singh and his wife Raj Kaur. The complainant disclosed this fact to Sukhpal Singh brother of Mohinderpal Singh. Said Sarabjeet Kaur was also having relationship with Manpreet Singh alias Mani, who used to visit her. Mohinderpal Singh objected to it, due to which there remained dispute between Manpreet Singh and Mohinderpal Singh. About two months prior to the occurrence, Sarabjeet Kaur vacated the house and started residing at Rampura Road Bhawanigarh on rent. However, Mohinderpal Singh continued visiting her at the said place. On 24.08.2015, Mohinderpal Singh had gone to Bhawanigarh to meet Sarabjeet Kaur in his Tempo Tata Ace bearing Registration No. PB-11BA-2110. When he did not return, he (complainant) along with Sukhpal Singh went to the house of Sarabjeet Kaur and saw that Sarabjeet Kaur along with Manpreet Singh alias Mani, Mani Singh alias Kaka, Lakhvir Singh alias Lakhi were threatening Mohinderpal Singh not to visit the house of Sarabjeet Kaur. Mohinderpal Singh told him (complainant) and Sukhpal Singh to go back as he would come later on. Both of them returned, however, Mohinderpal Singh did not return. They started searching for him. On 26.08.2015, dead body of Mohinderpal



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Singh was found in the canal of village Khanal Kalan. There was injury on his head, with multiple injuries on his body with a piece of cloth tied around his neck. The complainant and Sukhpal Singh strongly believed that on 24.08.2015 Mohinderpal Singh was murdered by accused Sarabjeet Kaur, Manpreet Singh alias Mani, Lakhvir Singh and Mani alias Kaka Singh and his body was thrown on the canal near Bhatiwal. The reason behind this occurrence was Mohinderpal Singh was creating hinderance in the relationship of Sarabjeet Kaur with Manpreet Singh alias Mani.

3. On this complaint, formal FIR No. 103 dated 26.08.2015 under Section 302/34 of Indian Penal Code, 1860 (for short 'IPC') was registered at Police Station Bhawanigarh, District Sangrur. Inquest report was prepared and dead body was sent for postmortem examination. On 27.08.2015, police party alongwith complainant was present on the bridge of canal of village Bhatiwal Kalan in search of accused when a tempo bearing Registration No. PB-11BA-2110 was seen coming. On seeing police party, driver of said Tempo tried to reverse the vehicle but he was apprehended. Accused persons namely Manpreet Singh alias Mani, Sarabjeet Kaur and Lakvir Singh alias Lakhi were identified by complainant Balvir Singh. Said Tempo was also taken into police possession. On 28.08.2015, accused persons were produced before the Court and were remanded to police custody, whereas, fourth accused was sent to Children Observation Home (being juvenile). As per disclosure statements of accused persons, iron *daahs*, bed sheet, one purse of deceased containing photocopy of registration certificate of



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Tempo, one voter card and mobile phone were recovered and taken in police possession. Statements of witnesses were recorded. After completion of investigation, challan was presented against accused Sarabjeet Kaur, Manpreet Singh alias Mani and Lakhvir Singh, while separate challan against child in conflict with law was presented before Juvenile Justice Board.

4. Accused were supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 302 of IPC is exclusively triable by the Court of Sessions, therefore, learned Additional Chief Judicial Magistrate, Sangrur committed the case to the Court of learned District and Sessions Judge, Sangrur for trial vide commitment order dated 17.12.2015.

5. Learned Sessions Judge, Sangrur, after hearing the arguments, framed charge-sheet against accused Sarabjeet Kaur, Manpreet Singh alias Mani and Lakhvir Singh alias Lakhi under Section 302 read with Section 34 of IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

6. In order to prove the facts of the case, prosecution examined Balvir Singh complainant as PW1, Sukhpal Singh as PW2, Dr. Gaurav Mittal as PW3, Balwinder Singh as PW4, Constable Lakhwinder Singh as PW5, Harwinder Singh as PW6, HC Tejinderpal Singh as PW7, Inspector Sukhminder Singh as PW8 and HC Arvinderpal Singh as PW9. Thereafter, learned Public Prosecutor for the State closed prosecution evidence.



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7. Statements of accused were recorded under Section 313 Cr.P.C. While denying all incriminating evidence put to them, they pleaded innocence and false implication.

8. Accused closed their defence evidence without examining any witness.

9. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused besides considering evidence on record, accused Sarabjeet Kaur, Manpreet Singh and Lakhvir Singh were acquitted of the charge framed against them vide impugned judgment of acquittal dated 21.04.2016.

10. Feeling aggrieved of this judgment of acquittal, applicant/appellant/complainant has filed present application seeking leave to appeal.

11. Learned Amicus Curiae for applicant argued that respondents No. 2 to 4/accused namely Sarabjeet Kaur, Manpreet Singh and Lakhvir Singh were wrongly acquitted of the charge framed against them. The prosecution had led convincing evidence on record to prove the charge-sheet. Entire occurrence was proved on file by examining complainant Balvir Singh as PW1 and Sukhpal Singh as PW2. They categorically stated that on 24.08.2015, they had gone to the house of Sarabjeet Kaur in search of Mohinderpal Singh deceased victim, where respondents No. 2 to 4 were present and they were threatening Mohinderpal Singh not to visit the house of Sarabjeet Kaur, otherwise he will have to face dire consequences. Mohinderpal Singh told Balvir Singh and Sukhpal Singh to return home as he would come home later.



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Thereafter, Mohinderpal Singh did not return home and they started searching for him. Finally on 26.08.2015, dead body of Mohinderpal Singh was recovered from the canal near village Khanal Kalan. It is argued that Mohinderpal Singh was last seen in the company of respondents No. 2 to 4/accused who were threatening deceased victim with dire consequences. Statements of Balvir Singh complainant PW1 and Sukhpal Singh who is brother of Mohinderpal Singh as PW2 were wrongly ignored.

Learned Amicus Curiae representing applicant pointed out that motive behind this occurrence is also duly proved on record from the testimony of aforesaid witnesses. Earlier Sarabjeet Kaur respondent No.2/accused was residing in rented house belonging to Mohinderpal Singh in Sundar Basti Patran. She developed illicit relations with Mohinderpal Singh. She was also having illicit relations with Manpreet Singh alias Mani to which deceased victim objected to and on this account there was quarrel between Mohinderpal Singh and Manpreet Singh alias Mani. Sarabjeet Kaur shifted to another house at Rampura Road, Bhawanigarh where Mohinderpal Singh continued to visit her. Because of this reason, deceased victim was murdered by accused/respondents No. 2 to 4 and his body thrown in a canal. Dr.Gaurav Mittal PW3 has proved Postmortem Report of deceased Mohinderpal Singh Ex.PC, carbon copy of report Ex.PC/1 and pictorial diagram Ex.PC/2. As per report, deceased victim had suffered five injuries on his body and as per the opinion of Board of Doctors, cause of death was "hemorrhage and shock as a result of various antemortem



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injuries as described especially no. 1 which are sufficient to cause death in ordinary course of nature”.

Learned Amicus Curiae further pointed out that respondents No. 2 to 4 were connected with said crime on the basis of their disclosure statements and recoveries which were effected from them. On the disclosure statement of Manpreet Singh alias Mani and Lakhvir Singh alias Lakhi recorded on 30.08.2015, *Daahs* were recovered whereas on the disclosure statement of Sarabjeet Kaur blood stained bed sheet, copy of registration certificate of Tata Ace Tempo bearing no. PB-11BA-2110, voter card and mobile phone were recovered. Charge framed against accused/respondents No. 2 to 4 under Section 302/34 IPC duly stands proved on record. The judgment of acquittal dated 21.04.2016 passed by the Court of learned Sessions Judge, Sangrur is not on sound footing. Therefore, applicant may be granted leave to appeal against judgment of acquittal.

12. We have heard arguments advanced by learned Amicus Curiae and have gone through the record carefully.

13. The facts of case indicate that FIR was registered on the statement of Balvir Singh Ex-Sarpanch who is brother-in-law of deceased Mohinderpal Singh. Complainant alleged that on 24.08.2015, he along with Sukhpal Singh lastly saw Mohinderpal Singh in the company of accused namely Sarabjeet Kaur, Manpreet Singh alias Mani, Mani Singh alias Kaka and Lakhvir Singh alias Lakhi in the house of Sarabjeet Kaur at Rampura Road, Bhawanigarh and thereafter Mohinderpal Singh did not return home. Body of Mohinderpal Singh



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was recovered from a canal in the area of village Khanal Kalan on 26.08.2015 and thereafter, statement was recorded by police on the same day at about 09:30 pm, which is Ex.PA and on the basis of aforesaid statement, FIR no. 103 dated 26.08.2015 under Section 302/34 IPC was registered at Police Station Bhawanigarh. Copy of FIR proved on record is Ex.PG. The facts of case clearly indicate that there was no eye witness to the commission of offence and prosecution case is based on last seen theory as well as recovery of alleged weapons of offence and other articles on the basis of disclosure statements given by respondents No. 2 to 4/accused. Since the entire prosecution case is based on circumstantial evidence, therefore, onus was placed heavily upon prosecution to complete the entire chain of events which would unwaveringly indicate that offence was committed by respondents No. 2 to 4/accused. **Hon'ble the Supreme Court of India** in case titled "**Aftab Ahmad Anasari versus State of Uttaranchal**", 2010(1) Crimes 97 emphasized the facts and evidence which are to be considered while dealing with the case based on circumstantial evidence. In para no. 4 of the judgment, it was held as under :-

"..... It is relevant to notice that the prosecution has not claimed that the rape and murder of the deceased was witnessed by anyone and no direct evidence regarding the same is adduced before the Court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion howsoever strong cannot be



allowed to take place of proof and, therefore, the Court has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturization of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of



doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.”

14. We have examined the statements of witnesses and documents proved on record carefully. It is a matter of record that Mohinderpal Singh, aged about 52 years was married to Raj Kaur, sister of complainant Balvir Singh and with five daughters and a son being born from this wedlock. The deceased had rented out his house in Sundar Basti, Patran to Sarabjeet Kaur respondent No. 2/accused. Deceased used to visit the house of Sarabjeet Kaur to collect rent and in that course he developed illicit relations with her. It is further alleged that Sarabjeet Kaur was having illicit relations with Manpreet Singh alias Mani also who used to visit her house. Mohinderpal Singh objected to their relation, as a result of which there was dispute with Manpreet Singh



alias Mani. About two months prior to the occurrence, Sarabjeet Kaur vacated the house and shifted to a house at Rampura Road, Bhawanigarh where Mohinderpal Singh continued to visit Sarabjeet Kaur respondent No.2/accused. The aforesaid facts clearly show that Mohinderpal Singh is alleged to be having extra marital affair with Sarabjeet Kaur accused No. 1 and is stated to be visiting her at the rented house at Patran and thereafter in the house at Bhawanigarh.

15. It is pertinent to note a glaring fact that Raj Kaur, wife of deceased Mohinderpal Singh never lodged any complaint before any authority regarding the act and conduct of her husband nor is she cited as a witness in this case. In the absence of statement of Raj Kaur, motive behind the occurrence is not clearly established by prosecution. Raj Kaur is a material witness in the given factual matrix and could have shed valuable light on the circumstances. There is no explanation for her non-examination.

16. Prosecution has built up its case on the basis of 'last seen theory'. It was observed by **Hon'ble the Apex Court** in case title **"Nizam and another Versus State of Rajasthan" (2016) 1 Supreme Court Cases 550**, where in para no. 14, it was held as under :-

".... Undoubtedly, the "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied



taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

As per prosecution case, Balvir Singh gave his statement to police for the first time on 26.08.2015 naming respondents No. 2 to 4/accused while stating that he along with Sukhpal Singh had seen Mohinderpal Singh for the last time on 24.08.2015 in the house of Sarabjeet Kaur at Bhawanigarh. It has come in the cross-examination of Balvir Singh complainant PW1 that he had given missing report of Mohinderpal Singh on 24.08.2015 or 25.08.2015. However, no such report lodged with police regarding missing of Mohinderpal Singh is available on record. In case Balvir Singh and Sukhpal Singh saw Mohinderpal Singh in the company of accused persons on 24.08.2015 or quarreling with Mohinderpal Singh, there was no reason for complainant Balvir Singh or Sukhpal Singh for not lodging report with police on the same day or atleast the next day when Mohinderpal Singh did not return home. In-fact, peculiarly statement of Balvir Singh complainant was recorded after the recovery of dead body of Mohinderpal Singh from the canal near village Khanal Kalan on 26.08.2015. The aforesaid fact creates serious doubts regarding ‘last seen theory’ of Mohinderpal Singh being in the company of respondents No.2 to 4/accused put forth by prosecution.

17. Inspector Sukhminder Singh, Investigating Officer PW8 deposed that on 27.08.2015 he along with police party accompanied by complainant conducted raids to apprehend accused persons. He



organized *naka* in the area of village Bhatiwai Kalan and there he saw one Tempo Ace bearing No. PB-11BA-2110 coming from the side of village Bhatiwai Khurd. Complainant identified driver of Tempo as Manpreet Singh alias Mani, Sarabjeet Kaur was sitting by his side whereas Lakhvir Singh alias Lakhi was sitting behind them. Said Tempo was owned by Mohinderpal Singh. It was taken in police possession vide memo Ex.PJ, whereas, Manpreet Singh alias Mani, Sarabjeet Kaur, Lakhvir Singh alias Lakhi were arrested vide arrest memos Ex.PK/1 to Ex.PK/3 respectively. There is a major discrepancy regarding the manner in which aforesaid Tempo was taken in police possession. Balvir Singh complainant as PW1 during his cross-examination categorically stated that four wheeler of his brother-in-law was found abandoned in the area on the backside of Water Works, Grain Market, Bhawanigarh. He further stated that many persons had already collected there and police party also arrived and said four wheeler was taken away by police from the said place whereas, the accused are stated to have been apprehended while travelling in the said tempo as per version put forth by the Investigating Officer, PW-8. Therefore, there is material discrepancy in prosecution evidence regarding the manner of arrest of accused persons and recovery of vehicle.

18. Prosecution further alleged that after the arrest of accused persons, they were interrogated and suffered disclosure statements on 30.08.2015. As per disclosure statement of Manpreet Singh alias Mani Ex.PM, he led police party to recover *Daah* (a sharp edged implement often used in agricultural pursuits). Its outer sketch is Ex.PN and



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recovery memo is Ex.PO. Similarly, Lakhvir Singh alias Lakhi suffered disclosure statement Ex.PM/2 which led to recovery of another *Daah*. Its outer sketch is Ex.PQ and was taken in police possession vide recovery memo Ex.PR. Both implements had a two and half inch wide blade about 10/11 inches long with wooden handles. Disclosure statement of Sarabjeet Kaur is Ex.PM/1 which statedly led to recovery of blood stained bed sheet, photocopy of RC of Tata Ace tempo, voter card and a mobile phone which were taken in police possession vide recovery memo Ex.PS. The aforesaid recoveries were effected from the corner of the plot, in the house taken on rent by Sarabjeet Kaur. Site plan of place of recovery is Ex.PT. Inspector Sukhminder Singh PW8 during his cross-examination conceded that at the time of interrogation of accused persons and recording of disclosure statements, no private witness was joined in police party nor any private person was joined at the time of aforesaid recoveries. In order to connect accused with said crime, Investigating Officer did not make any effort to lift fingerprints from the weapons allegedly recovered on the basis of disclosure statements. In the given scenario, report of Forensic Science Laboratory Ex.PY indicating that bed sheet so recovered was stained with human blood by itself is not sufficient to indicate a hypothesis of guilt of the accused permitting no scope of a conclusion of their innocence.

19. Learned Amicus Curiae for applicant/appellant failed to establish that any material evidence led by prosecution was ignored by trial Court while deciding the present case. In-fact, it was for the prosecution to bring home the guilt of accused beyond the shadow of



reasonable doubt. Learned Sessions Judge while deciding present case has rightly considered all the facts and circumstances of the case and rightly concluded that prosecution had failed to bring home the guilt of accused persons beyond the shadow of reasonable doubt.

20. It is a settled position 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, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of Hon'ble the Supreme Court in 'Mahamadkhan Nathekhan vs. State of Gujarat' **2014 (14) SCC 589**.

21. Considering the facts of case and evidence on record, judgment of acquittal dated 21.04.2016 passed by learned Sessions Judge, Sangrur in favour of respondents No. 2 to 4/accused does not call for any interference and same is accordingly upheld.

22. Leave to appeal is accordingly, dismissed.

23. Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

24.05.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No