



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-26-DB-2007

Date of Decision: 18.11.2024

KULWINDER SINGH

... Appellant

Versus

STATE OF PUNJAB

...Respondents

CRA-D-62-DB-2007

DINESH

... Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Hundal, Advocate
for the appellant in CRA-D-26-DB-2007
and Amicus Curiae for the appellant
in CRA-D-62-DB-2007.

Mr. Kuljit Singh, Addl. A.G., Punjab.

JASJIT SINGH BEDI, J.

This order shall dispose of two appeals bearing No.CRA-D-26-DB-2007 titled as Kulwinder Singh Vs. State of Punjab and CRA-D-62-DB-2007 titled as Dinesh Vs. State of Punjab as the same arise out of a common FIR. However, for the sake of convenience the facts have been taken from CRA-D-26-DB-2007.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 11.11.2006 passed Sessions Judge, Ludhiana.

3. The FIR was registered on 17.01.2005, the judgment of conviction and order of sentence passed by the Session Judge, Ludhiana is dated 11.11.2006, the appeal was filed on 10.01.2007 and the matter is being taken up for hearing now after 19 ½ years of the registration of the FIR.

4. The First Information Report of this case was registered on the basis of the statement of Shiv Charan Singh son of Kartar Singh resident of House No. 170 Jamalpur Road-Dakha stating therein that he was resident of afore-mentioned address and an agriculturist by profession. He had two sons and one daughter. Both his sons were unmarried and daughter was married. His younger son Navdeep Singh alias Gora aged about 19-20 years on 16-01-2005 at about 10.00 AM went to Mullanpur on motor cycle bearing No.PB-10-AL- 7923. On the same day at 4.00 P.M. his motor cycle was found near the railway level crossing of village Jangpur, but whereabouts of his son Navdeep Singh were not known to them. He and his family members kept on searching to him but he could not be found. The next morning he received a telephonic message from his brother that Navdeep Singh his son had been murdered by some unidentified persons by strangulating with the help of a telephone wire and his dead body was lying in the bushes near the bridge of drain. On receipt of this message, he along with his friend Jaswant Singh son of Gurbax Singh went to the spot and he identified the dead body of his son Navdeep Singh. Inspector Prem Singh, Police Station Dakha recorded the

statement of Shiv Charan Singh, on the basis of which, formal FIR was recorded. Thereafter, Prem Singh Inspector along with other police officials in the company of Shiv Charan Singh inspected the spot and prepared the inquest report Ex. PC. He lifted the blood stained earth from the spot, which was converted into a parcel and taken into possession vide memo Ex.PF. He recorded the statement of the witnesses. He prepared the rough site plan showing the place of occurrence with correct marginal notes. The dead body of Navdeep Singh alias Raju was sent to Civil Hospital, Ludhiana for post mortem examination, which was conducted by Dr. U.S. Sooch. He also took into possession two parcels containing clothes of the deceased and the other containing telephone wire. He arrested both the accused. Kulwinder Singh accused on the basis of his disclosure statement, got recovered a gold chain and currency notes worth Rs. 300/- duly wrapped in a glazed paper, while Dinesh accused in pursuance of his disclosure statement got recovered the purse containing one photograph as well as currency notes of Rs. 800/-, which were taken into possession vide memos. After completion of the investigation, the accused were challaned by Prem Singh, Inspector.

5. After hearing the Public Prosecutor for the State and the counsel for the accused, on commitment the accused were charged under Section 302 read with Section 34 of the Indian Penal Code, which they did not plead guilty and claimed trial.

6. In order to substantiate the charge against the accused, the prosecution examined Dr. U. Sooch P.W.1, Bakshish Singh SI P.W.2, Shiv Charan Singh P.W.3, Jaswant Singh P.W.4, Chaman Lal C-II P.W.5,, Shivjit Singh P.W.6, Gurminder Singh P.W.7, Baldev Singh P.W.8, HC Nachhatar

Singh P.W.9, Inspector Prem Singh P.W.10, HC Hamir Singh P.W.11 and Harinder Singh P.W.12.

7. The accused were examined under Section 313 Cr. P.C. wherein they denied all the incriminating circumstances appearing in the prosecution evidence and pleaded that they were innocent and had been falsely implicated in the case.

8. Based on the evidence led, the appellants came to be convicted and sentenced as under:-

Convicts	Offence under Sections	Sentence	Fine	In default of fine
Kulwinder Singh	302/34 IPC	Imprisonment for life	Rs.5000/-	RI for 06 months
Dinesh	302/34 IPC	Imprisonment for life	Rs.5000/-	RI for 06 months

9. It is the aforementioned judgment, which is under challenge, in the present appeals.

10. The learned counsel for the appellant in CRA-D-26-DB-2007 and learned Amicus Curiae in CRA-D-62-DB-2007 for the appellant contends that the evidence of PW4-Jaswant witness of ‘last seen’ cannot be believed. He was a witness in the inquest proceedings and made no mention that he had seen the deceased in the company of the accused at 10/11.AM on 16.01.2005. In fact, he was a planted witness. PW8-Baldev Singh, the witness of the extra-judicial confession could not be believed as he had no close relationship with the accused and therefore, there was no need for them to make a confession before him. Even otherwise, he was the Lambardar of Village Rakba whereas the deceased and accused Kulwinder (appellant in CRA-D-26-DB-2007) were residents of Village Dakha which had a separate

Lambardar. Once, these two planks of evidence were on a shaky footing, the conviction could not be based merely on certain recoveries being effected. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Kalinga @ Kushal Vs. State of Karnataka By Police Inspector, Hubli, Criminal Appeal No.622 of 2013, decided on 20.02.2024, State of Karnataka Vs. P. Ravi Kumar @ Ravi etc., Criminal Appeals No.1428-1429 of 2013, decided on 16.08.2018* and *Jagta Vs. State of Haryana, 1974 AIR, SC 1545.*

11. The learned counsel for the State, on the other hand, contends that the evidence of last seen, extra-judicial confession and recovery completed the chain of circumstantial evidence so as to affix the guilt of the accused. There was no motive on the part of the Investigating Agency to falsely implicate them. He, therefore, contends that no fault could be found with the well-reasoned judgment of conviction passed by the Sessions Judge, Ludhiana and the present appeals were liable to be dismissed.

12. We have heard the learned counsel for the parties and gone through the LCR.

13. The statement of PW4-Jaswant Singh was recorded to the effect that on 16.01.2005, he had seen the deceased in the company of the accused. However, when his statement was recorded in the inquest proceedings, he did not refer to this fact of him having seen the deceased in the company of the accused. This creates a doubt in the evidence of PW4.

14. The statement of PW8-Baldev Singh was recorded to the effect that the accused had made an extra-judicial confession to him admitting their guilt. However, in cross-examination, he admitted that he was not on visiting

terms with the accused and that he was a Lambardar of Village Rakba and that the accused Kulwinder Singh and the deceased were residents of Village Dakha. In this situation, where the accused did not have any prior acquaintance with this witness, the question of them making an extra-judicial confession before him does not arise. Even otherwise, the Hon'ble Supreme Court in the cases of Kalinga @ Kushal (supra), State of Karnataka (supra) and Jagta (supra) has held that by its very inherent nature, an extra-judicial confession is a weak piece of evidence and ought not to be the basis of conviction without any substantive corroborative evidence, which in the instant case appears to be lacking.

15. Further, the recoveries of Rs.300/- cash and a gold chain at the instance of Kulwinder Singh and a purse, a photograph of Navdeep Singh (deceased) and Rs.800/- at the instance of Dinesh (appellant in CRA-D-62-DB-2007) also does not further the prosecution case. The gold chain did not have any specific mark of identification on it and was easily available in the market. The place of recovery was open and accessible to all. The purse recovered also did not have any specific identification mark and was easily available in the market. The cash allegedly recovered from the accused also did not have any specific marks of identification. Further, it does not stand to reason that the accused would retain a photograph of the deceased after committing the offence in question. Resultantly, the recoveries from the accused persons are also highly doubtful.

16. The cumulative effect of the above discussion is that the prosecution has not proved its case beyond reasonable doubt and the

circumstantial evidence does not conclusively point towards the guilt of the accused.

17. Keeping in view the totality of the facts and circumstances, the impugned judgment of conviction and order of sentence dated 11.11.2006 passed by the Sessions Judge, Ludhiana cannot be sustained and therefore, we allow both the appeals, set aside the judgment of conviction and order of sentence and acquit the appellants of the charges framed against them.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

18.11.2024

JITESH

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