

2024:PHHC:078897-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-110-2022

Reserved on: 18.05.2024

Date of decision: 31.05.2024

Mohinder Singh

.....Applicant

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Viren Sibal, Advocate, for the applicant.

Mr. Dhruv Dayal, Addl. A.G., Punjab.

SUDHIR SINGH, J.

The instant application seeking leave to appeal is preferred against the judgment dated 26.02.2020 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, whereby respondents No.2 to 4 have been acquitted of the charges under Sections 302, 201, 120-B read with Section 34 IPC.

2. Vide order dated 26.07.2022, the Lower Court record was called for. The same was received on 24.01.2023.

3. The prosecution case, as per the complaint of complainant-Mohinder Singh (PW-4) was that on 21.03.2016, his son Jatinderpal Singh (since deceased), who was working in a factory at Malerkotla, had left home for his duty. After the duty hours, he told Malkit Singh son of Teja Singh of their village, to go back to the village by saying that he had to meet his relatives on the way. Thereafter, Jatinderpal Singh failed to

return back home. He (Mohinder Singh) inquired about the whereabouts of his son at his own level, but in vain. On 25.03.2016, he received a telephonic call from unknown person, who informed him that a dead body, which was recovered from the canal on 24.03.2016, was lying in the mortuary of Civil Hospital, Amloh. The complainant identified the dead body to be that of his son Jatinderpal Singh. At that time, he categorically informed ASI Jaswant Singh that he had no suspicion against anyone and he believed that Jatinderpal Singh had died due to drowning in the canal. On the basis of the said statement, SI Jaswant Singh conducted the proceedings under Section 174 Cr.P.C. On 25.03.2016, postmortem of the dead body was got conducted. As per the Board of Doctors, the cause of death was wet drowning and any other associated cause with death would be revealed after getting the report of the Chemical Examiner. The viscera was sent for chemical analysis. On 01.04.2016, the complainant (Mohinder Singh) got recorded another statement (Ex.P3) stating that on 21.03.2016, as a matter of routine, his son Jatinderpal Singh had left home for work and never returned home alive. On 24.03.2016, his dead body was fished out from the canal somewhere in between the bridge of Tandabadda and Jore Pull. On 25.03.2016, he had identified the dead body and had furnished a statement to the police. After conducting the postmortem on the dead body, the same was cremated. Soon thereafter, there was a talk in the village that Salamdeen son of Gulzar Mohammad was in an illicit relationship with Parminder Kaur (daughter-in-law of complainant's brother). Deceased Jatinderpal Singh used to object to their relationship. On 01.04.2016, Gurcharan Singh son of Balkar Singh had informed the

complainant that on 21.03.2016, he was going on his motorcycle from canal bridge, Jore Pull towards canal bridge of Tandabadda and he noticed Salamdeen and Balwant Singh on the embankment of the canal in the company of Jatinderpal Singh (deceased) indulged in consuming alcohol. A black coloured motorcycle was also parked by their side. Since deceased Jatinderpal Singh used to object the illicit relationship of Salamdeen with Parminder Kaur, they were nursing a grudge against Jatinderpal Singh and had the motive of killing Jatinderpal Singh. Probably that was the reason Salamdeen, Parminder Kaur and Balwant Singh conspired with each other and killed Jatinderpal Singh by administering him some poisonous substance in the glass of liquor and thereafter, pushed him into the canal.

4. Based on the aforesaid statement, formal FIR No.34 dated 01.04.2016, under Sections 302, 201, 34, 120-B IPC, was registered against the accused-respondent Nos.2 to 4 at Police Station, Amloh. After investigation, the charge-sheet was submitted, whereafter cognizance was taken. Thereafter, charges were framed against the accused-respondent Nos.2 to 4, to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined fifteen witnesses, namely, PW1 Mohinder Singh, PW2 Gurcharan Singh, PW3 Darbara Singh, PW4 Dr. Gulzar Singh, PW5 Lakhwinder Singh, PW6 ASI Jaswant Singh, PW7 Jagdeep Singh, PW8 Vinay, PW9 Harwinder Singh, PW10 HC Gursewak Singh, PW11 HC Balvir Singh, PW12 Resham Singh, PW13 Inspector Harwinder Singh, PW14 ASI Paramjit Singh and PW15 SI Jaswant Singh. On conclusion of the prosecution evidence, statements of the accused (respondent Nos.2 to 4) were recorded under

Section 313 Cr.P.C., wherein entire incriminating evidence was put to them. But, they denied the same and pleaded false implication in the case. In defence, the accused-respondent Nos.2 to 4 examined DW-1 Avtar Singh, DW-2 Arjan Singh @ Bachan Singh, DW-3 Malkit Singh, Ex.-Panch, DW-4 Som Singh, DW-5 Nirmal Singh, DW-6 Harbhajan Singh and Dw-7 MHC Rupinder Singh. After conclusion of the trial, the learned Trial Court acquitted the accused persons, as stated above.

6. The grounds considered by the learned Trial Court for acquitting the respondents are as under:-

- i) On the basis of the testimony of doctor, the postmortem findings and the absence of any injury mark on the dead body of the deceased, the story of the prosecution to the effect that the deceased was administered aluminum phosphide poison in the shape of celphos tablets mixed in alcohol does not inspire much confidence. The medical evidence does not support the theory of homicidal death.
- ii) Had the deceased been administered poison by any foul play and then had his body been dragged to the canal by the accused with the help of parna tied around his neck, some physical marks were certainly expected to have been left.
- iii) There was neither any ligature mark on the neck, nor any dragging mark on any part of the body was found. The deceased was not a light weight baby that could have been carried by the assailants in their arms and thrown into the water body.

iv) The recovery of empty tumblers, any partly filled liquor bottle, shown to have been recovered from the spot as indicated in the report under Section 174 Cr.P.C., coupled with the oral version of SI Jaswant Singh (PW-15) and the contents of DDR No.11 dated 24.03.2016, rather supports the version of defence that it was a case of a suicide. It may have been possible that the deceased sat on the banks of canal, consumed liquor and then might have consumed celphos tablets containing aluminum phosphide poison and then jumped into the canal.

v) Had the dead body of the deceased been thrown into the water, there was no possibility for the water to have entered into the lungs as the possibility of water entering into lungs, only arises when an alive person gets into the water body and draws water during inhalation.

vi) The last seen theory put forward by the police through the testimony of PW-2 Gurcharan Singh did not inspire much confidence.

vii) As regards extra-judicial confession allegedly made by all the accused, it could not be explained by the prosecution as to how and why all the three accused would go to the house of PW-3 Darbara Singh at the same time in order to confess their guilt. The said witness stated in his testimony before the trial Court that he had worked with SHO Harminder Singh during his service. This fact shows that he has an affinity towards SHO Harminder Singh,

Investigating Officer. Hence, the theory of extra judicial confession did not find any favour.

viii) The version of the prosecution regarding the alleged recoveries at the instance of the accused to connect the link evidence, cannot be believed because the same was not proved in accordance with the procedure laid under Section 65-B of the Evidence Act.

ix) The credibility of the complainant (Mohinder Singh) is doubtful and his version recorded later on including the deposition in the Court was found to be doubtful.

x) The prosecution could not prove the conspiracy between Salamundin, Parvinder Kaur and Balwant Singh.

7. Learned counsel appearing for the appellant, has vehemently contended that the prosecution has proved on record not only the last seen theory but also the previous enmity of the accused-respondents with the son of the complainant. It is further submitted that if in the last seen evidence, the motive part is proved, nothing further is required to be done. It is further contended that pursuant to the extra judicial confession of the accused-respondents, the recoveries were effected at their instances. It is yet further argued that accused-respondent Salamdeen in his disclosure statement stated that he along with deceased had consumed liquor and after sometime, the deceased was thrown by them into the water body. It is, thus, submitted that in the face of such evidence on record, the trial Court fell in error of law and fact to hold that it was a suicidal death.

8. We have heard learned counsel for the applicant and have also gone through the record of the case.

9. The following issues would arise for the determination by this Court:-

- i) Whether the prosecution has been able to prove the 'last seen theory' to bring home the guilt on the part of the accused?
- ii) Whether the prosecution could prove the motive on the part of the accused to commit the crime?

10. Admittedly, there is no eye witness to the case. It is a case which is based on the last seen evidence; the extra judicial confession allegedly made by the accused and the recoveries effected at the instance of the accused, pursuant to such extra judicial confession.

11. The complainant in this case is Mohinder Singh and the deceased was his son. It has come on record that the deceased went missing on 21.03.2016 and that he could not be contacted till 25.03.2016, when his dead body was recovered. Accordingly, a missing report was lodged on 25.03.2016, (Ex. PW-15/7). A Panchayatnama was prepared which was signed by Mohinder Singh, Swaran Singh, Gurpreet Singh, Sarpanch, Kulwant Singh, Narpinder Singh, Agya Pal Singh, Palwinder Singh and Kulwinder Singh, wherein it was mentioned that the dead body of the deceased was recovered from the static water of the canal near the bridge of Tandabadda and they had reasonable belief that the deceased died due to drowning and they had no suspicion against anyone. During the proceedings under Section 174 Cr.P.C., PW-

Mohinder Singh made a similar statement (Ex. P-2) and in that statement as well he did not raise any suspicion against anyone. It was only on 01.04.2016 that the complainant, for the first time, gave a statement to the police expressing his apprehension against Salamdeen that he had illicit relations with Parminder Kaur and his son (deceased) used to object to it and which is why he was killed by the accused. In his cross examination, the said witness stated that he came to know about the illicit relations between accused Salamdeen and Parminder Kaur, the daughter in law of his brother only on 25.03.2016, but he still waited to lodge the FIR on 01.04.2016. The said witness (Mohinder Singh) when asked about not enquiring about the whereabouts of his deceased son till 25.03.2016, deposed that his son had told him that he had gone to visit some relative and therefore, he was not expected to return home on 21.03.2016. It was further stated by the said witness that he repeatedly tried to call his son on his mobile phone, but there was no response and that he could not say whether his phone was recovered with dead body or not. He further did not deny the correctness of his statement in the proceedings under Section 174 Cr.P.C. The aforesaid testimony of the complainant was found to be not inspiring confidence by learned trial Court.

12. In our opinion, if the complainant had suspected any foul play, he ought to have reported it to the police at the earliest. In his testimony, the said witness deposed that Parminder Kaur was the daughter-in-law of his elder brother. On the face of such deposition, it is not believable that he was not knowing about the illicit relations of accused Salamdeen with said Parminder Kaur, whereas his deceased son

had known about it. The matter can be looked from another angle. The deceased was also in a close relation to said Parminder Kaur. Nothing had come on record that he had objected to the alleged relations between accused-Salamdeen and Parminder Kaur, before the alleged occurrence. It has not come on record that prior to the alleged occurrence, the deceased had ever objected to and/or there had been any quarrel or dispute with accused Salamdeen or Parminder Kaur. Had there been any substance in the prosecution version regarding deceased having objection to the said illicit relations, he would have never gone with the accused.

13. So far as the call details between accused Salamdeen and deceased Jatinderpal Singh are concerned, it was found that the prosecution had failed to prove that sim No.76963-76522 which was in the name of Jagdeep Singh, was actually not used by the subscriber but by accused Salamdeen. The entire call details between accused Salamdeen and deceased Jatinderpal Singh were examined and it was found that on 21.03.2016 at 06:03 PM, the location of the user of sim phone No.87258-62914 (deceased) Jatinderpal Singh, was shown to be village and post office Gowara, Tehsil Malerkotla, whereas the tower location of user of sim No.76963-76522 (subscribed in the name of PW-Jagdeep Singh and allegedly being used by accused Salamdeen) on 21.03.2016 at 06:31 PM was shown to be at Tata Motors Dhuri Road, Malerkotla. It was found that the prosecution has failed to prove that the tower location of both the sims was the same. So far as the call details of sim No.87288-23571 was concerned, the same was not taken by the Court into consideration because the prosecution did not adopt the

procedure laid down under Section 65-B of the Evidence Act.

14. PW-3 Darbara Singh is the witness before whom the extra judicial confession was made by accused- Salamdeen stating therein that he had illicit relations with Parminder Kaur and when he used to visit her, the deceased would keep an evil eye on their meetings and it was for this reason that the deceased was eliminated by them. Accused- Salamdeen further confessed that on 21.03.2016, on the pretext of a party at canal, they consumed liquor while sitting on its bank and during the second round of drinks, they had poured some poisonous substance and when the deceased was in the process of the said drink, they had thrown him into the canal and murdered him by drowning. However, it was found by the learned trial Court that the said witness had once worked under SHO Harwinder Singh and therefore, having affinity towards him (SHO), the possibility of manipulation of the testimony of this witness by the SHO-Investigating Officer could not be ruled out.

15. On the basis of the aforesaid evidence, it was found by the learned trial Court that the prosecution has failed to prove the charges against the accused beyond reasonable doubt.

16. It is a settled law that in the cases of last seen evidence, the motive plays a vital role. In the instant case, the main motive attributed to the accused-respondent was that accused Salamdeen was having illicit relations with Parminder Kaur. Parminder Kaur was the daughter-in-law of the elder brother of Mohinder Singh (complainant). If this version, put forth by the prosecution is believed, then it is highly improbable that the complainant would disclose such a vital fact for the first time on 01.04.2016. It has come on record that at the first instance a

Panchayatnama was executed on 25.03.2016, when the same was signed by the witnesses, including the complainant, it was mentioned therein that they did not have any suspicion on anyone regarding the death of the deceased. Even in the proceedings under Section 174 Cr.P.C., the position was similar. Thus, it seems that the version put forth by Mohinder Singh (complainant) later on 01.04.2016 was only an afterthought.

17. In Nizam v. State of Rajasthan, (2016) 1 SCC 550, while considering the concept of 'last seen theory', it was held by the Hon'ble Apex Court that the entire circumstances preceding and following the point of last seen, must be taken into account. It was held as under:-

“14.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.”

In Sahadevan v. State of T.N., (2012) 6 SCC 403, it was held by the Hon'ble Apex Court that the factum of last seen may raise suspicion, but it is not independently sufficient to lead to a finding of guilt. It was held as under:-

“28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also

accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and the deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

29. In Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372, this Court took the view that where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19.7.1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that:-

“31. ... it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record [a] finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.”

30. Even in State of Karnataka v. M.V. Mahesh, (2003) 3 SCC 353 this Court held that:

“3. ... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court.”

XX

XX

XX

32. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while 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.”

18. Thus, the last seen theory, if examined with the circumstances preceding and followed by the alleged incident, does not inspire any confidence and the evidence led by the prosecution in this regard, was rightly found by the trial Court, not cogent and convincing to record the conviction of the accused-respondents. Issue No.1 is thus, answered in negative.

19. Coming to the motive part. The theory of extra judicial confession was also found to be faulty and the person before whom such confession was made was found to be an acquaintance of SHO-Investigating Officer. Similarly, the prosecution could not lead the evidence by following due procedure under Section 65-B of the Evidence Act, to prove the call details of the mobile phone, allegedly used by the deceased with that of accused- Salamdeen.

20. In the aforesaid extra-judicial confession, accused-Salamdeen had confessed to have illicit relations with Parminder Kaur and that it was for this reason that the accused had eliminated the deceased. It is well settled that extra-judicial confession is a weak kind of evidence and it must be corroborated by the other circumstances and material on record, so as to establish guilt of the accused. In the instant case, as noticed above, the prosecution was not able to prove the last

seen theory. Thus, when the very case is based on circumstantial evidence, the motive part is also lacking and has not been proved by the prosecution. Thus, issue No.2 is also answered in negative.

21. In our opinion the findings recorded by the learned trial Court is just and proper and we do not find any illegality or perversity in the said findings.

22. In view of the above, finding no merit in the present application the same is dismissed and leave to appeal is declined.

23. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

31.05.2024
Ajay Prasher/Himanshu

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