
(2009) 03 P&H CK 0229

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 319-DB of 2000

Mohan Lal and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 26, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302

Citation: (2009) 3 RCR(Criminal) 254

Hon'ble Judges: Nawab Singh, J; K.S. Garewal, J

Bench: Division Bench

Advocate: J.S. Bedi, No. 1, Mr. Govind Dhanda, No. 2, for the Appellant; H.S.Sran, Addl. A.G. for the Respondent-State, for the Respondent

Final Decision: Allowed

Judgement

Nawab Singh, J.

This appeal has been filed by the accused-appellants against the judgment and order dated May 23/24,2000 passed by learned Additional Sessions Judge (I), Kaithal, whereby they were convicted for the offence punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code (for short "IPC") and sentenced to undergo imprisonment for life for the offence punishable u/s 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for five years each for the offence punishable u/s 201 read with Section 34 IPC. Both the sentences were directed to run concurrently.

2. Four accused, viz. Mohan Lal, Sat Parkash alias Satta, Kundan and Kaushalya were arraigned for trial. Out of them, Kundan and Kaushalya have been acquitted by the trial Judge.

3. Per prosecution case is that, on October 4,1992, Inderjeet alias Rajinder (deceased) went to village Jeetgarh, District Kaithal to fetch his wife Kaushalya but never returned. Search was made but no clue was found about his whereabouts.

Chandi Ram, father of the deceased (PW6) informed the Police of Police Station Pundri on February 25, 1994, that is, after 1 year 4 months and 21 days of disappearance of the deceased. Chandi Ram's statement (Exhibit PJ) was recorded by Avtar Singh, Assistant Sub Inspector (for short "ASI") (PW14). He suspected that in-laws of deceased were instrumental in causing the disappearance of his son because Kaushalya left her matrimonial home in the month of August, 1992 after having a quarrel. Avtar Singh ASI (PW14) appended his endorsement (Exhibit PJ/1) and sent the same to Police Station. On the basis of the statement (Exhibit PJ), formal First Information Report (for short "FIR") (Exhibit PJ/2) was recorded in Police Station Pundri, District Kaithal u/s 364 IPC. Avtar Singh ASI (PW14) proceeded to village Jeetgarh and prepared the site plan (Exhibit PHH) of the house where Inderjeet alias Rajinder slept on October 4, 1992. Chandi Ram (PW6) and Ram Kali, mother of Kaushalya handed over letters (Exhibits PS and PT) purporting to have been written by Inderjeet alias Rajinder to them respectively. The letters were taken into possession vide seizure memorandum (Exhibit PJJ).

4. On March 1, 1994 Avtar Singh ASI (PW14) along with Dr. J.R. Jain of Forensic Science Laboratory (for short "FSL") reached village Jeetgarh. Sarpanch, Chowkidar and other respectables of the village were summoned and all of them then proceeded to the field of Roop Chand (PW11). Earth from the field of Roop Chand was dug. A coin (Exhibit P11) was found and taken into possession vide recovery memorandum (Exhibit PQ), which was attested by Rajiv Kumar, Sarpanch of village Jeetgarh (PW10). The rough site plan (Exhibit PKK) of the place of recovery of coin (Exhibit P11) was drawn.

5. On March 5, 1994 accused-appellants went to Shilu Ram (PW7) resident of village Bhuna (deceased's village), who was on that day in village Mundri. It was stated by Mohan Lal accused that Inderjeet was married in village Jeetgarh with Kaushalya. He (Mohan Lal) had illicit relations with Kaushalya. Inderjeet came to village Jeetgarh on October 4, 1992. On October 5, 1992, he (Mohan Lal) served him liquor after mixing poisonous substance. On account of that, he died. At that time, Sat Parkash accused was also with him. Shilu Ram (PW7) brought both the accused to village Ravanhera. Panchayat of villages Ravanhera and Jeetgarh was common. He went to the house of Rajiv Kumar, Sarpanch of Gram Panchayat, Ravanhera (PW10).

6. Dhanna Ram Investigator (PW13) reached village Ravanhera. Rajiv Kumar (PW10) produced both the accused before the Investigator. The accused were arrested. They made confessional statements (Exhibits PK and PL) before the Police and in the presence of Rajiv Kumar (PW10) and Shilu Ram (PW7).

7. On March 7, 1994 Sat Parkash accused led the Police party to his house and got recovered bicycle and Kassi, which were taken into possession vide seizure memorandum (Exhibit PM).

8. On March 10, 1994, both the accused led the Police party to the field of Roop Chand (PW11), where they had buried the dead body of the deceased and got recovered two teeth, one nail and some hair. The same were taken into possession vide seizure memorandum (Exhibit PN).

9. On March 21, 1994 the coin (Exhibit P11) was got identified by the Investigator from Chandi Ram (PW6) to be of his son in the presence of Ishwar Singh, Naib Tehsildar (PW3) and Khayali Ram, Gold Smith (PW4).

10. After completion of the investigation and other formalities, the accused-appellants were sent up for trial.

11. Charge, in respect of commission of offence punishable under Sections 302 and 201 read with Section 34 IPC, was framed against the appellants. They pleaded not guilty and claimed trial.

12. The trial ensued. The prosecution examined 14 witnesses. These are : Sham Lal Draftsman (PW1), Shamsheer Singh (PW2), Ishwar Singh, Naib Tehsildar (PW3), Khayali Ram (PW4), Dassa Chowkidar (PW5), Chande Ram (PW6), Shilu Ram (PW7), Jagdish (PW8), Mohinder Singh (PW9), Rajiv Kumar (PW10), Roop Chand (PW11), Mam Chand SI (PW12), Dhanna Ram SI (PW13), Avtar Singh ASI (PW14).

13. In their examination recorded u/s 313 of the Code of Criminal Procedure, the accused-appellants denied the allegations and pleaded that they were falsely implicated.

14. The evidence on record, material circumstances of the case and the arguments addressed by the learned counsel for the appellants and the learned State counsel have been appraised.

15. In this case, the deceased disappeared on October 4, 1992. Report to the Police was lodged on February 25, 1994, that is, after the delay of 1 year 4 months and 21 days. The explanation put-forth by Chandi Ram (PW6) father/author of the FIR was that he had searched for his son but no clue was found and during the period intervening October 4, 1992 to February 25, 1994, he requested the Police to lodge the report but Police did not. The explanation putforth by Chandi Ram (PW6) does not appear to be justifiable. He could not tell the name of the Police Station or the official whom he approached to lodge the report. He even did not opt to report the matter regarding the missing of his son. Even on February 25, 1994 he did not name the accused as the culprits of the murder of his son. Rather, he stated that he suspected foul play at the hands of in-laws of his son. Under these circumstances, the prosecution failed to explain the delay in lodging the FIR.

16. No eye witness account of the murder is available in this case and it rests solely on circumstantial evidence. In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on

circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set-out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis as has been held lucidly and in an enlightening manner by Hon"ble Apex Court in Shankarlal Gyarasilal Dixit v. State of Maharashtra, 1981 Cri. L.J. 325 (1) SC.

17. The confession before the Police would be inadmissible. Shorn of that, two circumstances, which have been relied heavily by the prosecution, are the extra-judicial confession and so recoveries. The extra-judicial confession set-up in this case by the prosecution was made by the accused before Shilu Ram (PW-7). This person belongs to village Bhuna, that is, the native village of the deceased. The distance between the village of the accused and village Bhuna is admittedly 100 kms. Why should the accused go all the way travelling 100 kms to make a confession before Shilu Ram (PW-7) ? What will the accused gain by doing so ? What help, if any, could be rendered by Shilu Ram (PW-7) to the accused ? No answer to these pertinent questions, much less a satisfactory one, is coming forth from the prosecution. Deceased was missing from 1992. The extra judicial confession according to the prosecution case, was made before Shilu Ram (PW-7) by the accused on March 5th, 1994. What prompted the accused to go to Shilu Ram and confess his guilt after about one and a half years of the occurrence ? Again the question has gone without a satisfactory answer. Besides, the evidence is fraught with discrepancies in the context when the statement of Shilu Ram (PW-7) is read in the context along with the statement of Raj Kumar (PW-10). Raj Kumar (PW-10) deposed that on March 1st, 1994, Shilu Ram (PW-7) accompanied by Jagdish and 2-3 other persons came to his house along with the accused. It was never the case in the statement of Shilu Ram that Jagdish or any other person brought the accused to village Ravanhera. According to Shilu Ram (PW-7), he brought the accused on March 5, 1994 but Raj Kumar (PW-10) belied him by stating that Shilu Ram brought the accused on March 1st, 1994. All the afforesaid considerations, taken cumulatively, lead inevitably to the conclusion that the evidence regarding the extra-judicial confession is no evidence and is rather a made up story. Even otherwise, an extra-judicial confession is a piece of weak evidence when the extra judicial confession is surrounded by infirmities, as observed above, it shall fail to inspire confidence.

18. This Court can not help observing that the investigation was conducted in a slipshod and rather perfunctory manner. Recovery of a bicycle and a kassi was also set-up. The kassi (spade) was used only for the purpose of digging the earth to bury the dead body. According to the prosecution itself and the bicycle was used to carry the dead-body to the canal after many days of the murder. There is no forensic

evidence to connect the bicycle and the kassi with the murder. These are such articles as are ordinarily kept by the villagers or even residents of towns. Had the said articles been used in murder, criminal mind would not have kept them intact so as to present them on a platter to the Police after a long lapse of time. The evidence regarding the recovery is dubious in character and even if it could be assumed, by stretching the imagination, that the bicycle and kassi were recovered from the accused, it still, cannot further the case of the prosecution.

19. The coin (Exhibit P-11) was also allegedly recovered and then two teeth, a piece of nail and hair of the deceased were recovered at the instance of the accused. Chandi Ram (PW-6) claimed that deceased used to wear that coin. There is again no evidence to establish that the teeth, nail and hair were of the deceased. The coin was recovered from the same place. That spot had been seen by the Police and the discovery of the teeth, nail and hair from the same spot afterwards, at the instance of the accused does not appear to be natural nor can be taken as a cogent and convincing circumstance.

20. Two letters (Exhibit PS and PT) purporting to have been written by Mohan Lal accused to the father and mother-in-law of the deceased were taken into possession during the investigation and were sent to FSL. Vide Report (Exhibit PGG), it was opined that the letter were not in the hands of Mohan Lal accused. This being so, the letters cannot be of any avail. In fact, the circumstances clearly point out that the investigating agency indulged in padding

21. The evidence led before the trial Court by the prosecution was flimsy, shaky and not at all convincing. Prosecution failed to establish such a chain of circumstances which could lead to the only hypothesis of guilt of the accused. Unfortunately, learned trial Judge relied on this kind of evidence and circumstances without giving a thought to the well established principle for evaluation of the circumstances and the evidence. The circumstances available were not tested on the touchstone laid down by the Hon"ble Supreme Court in Shankarlal Gyarsilal Dixit's case (supra) and the plethora of case law available on the point. In fact, the prosecution case was neither here nor there.

22. In view of the foregoing discussion, this Court is of the considered opinion that prosecution altogether failed to bring the guilt home to the accused beyond reasonable doubt. The appeal is accordingly, accepted. The impugned judgment of conviction and order of sentence passed by the learned trial Judge are set-aside and the accused-appellants are acquitted of the charges. The bail/surety bonds shall stand discharged.