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**(2006) 07 P&H CK 0249**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 345 of 2003

Pawan Kumar and another

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** July 3, 2006

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 460

**Citation:** (2006) 4 RCR(Criminal) 219

**Hon'ble Judges:** R.S Madan, J; K.S. Garewal, J

**Bench:** Division Bench

**Advocate:** K.S. Ahluwalia with B.D. Sharma and Anju Sharma, for the Appellant; Reeta Kohli, D.A.G., for the Respondent

**Final Decision:** Allowed

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**Judgement**

R.S. Madan, J.

The appellants mentioned above having been convicted and sentence to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/- each, u/s 460 of the Indian Penal Code and in default of payment of fine to undergo further RI for one year, by the court of learned Sessions Judge, Hoshiarpur, vide order dated March 27, 2003, have preferred this appeal before this Court.

2. In brief, the facts of the case are that on July 16, 1995, Sodhi Lal son of Shri Dwarka Dass, Goldsmith, resident of Garhdiwala made statement before SI Gulshan Rai, Station House Officer of Police Station, Garhdiwala, that they are the four brothers and one sister and that his elder brother Ashok Kumar is married at Village Bhagowal, has gone to his in-laws along with his wife for the last four days; that his younger brother Sudesh resides with his sister who is married at Chandigarh and younger to him, namely, Naresh learns the work at the Goldsmith shop at Dasuya and resides there. It was on 16.07.1995, at about 6 PM he (Sodhi Lal) went out of his house to play and his mother Darshna Kumar was alone in the house and when he

after playing returned home at about 7.30 PM, he went inside the house and found that his mother smeared with blood was lying on the cot in the courtyard and blood was oozing out from many part of her body; that a blood stained knife was lying by the side of the cot; that he called his mother but she did not speak and had died, her gold ear rings were missing from her ears; that some unknown persons have murdered his mother and removed her ear rings. Legal action be taken. The aforesaid SI Gulshan Rai made his endorsement Ex.PG/1 and sent the same to the Police Station where on its basis, formal FIR Ex.PG/2 was recorded by SI Jagtar Singh. SI Gulshan Rai along with police officials and Sodhi Lal went to the place of occurrence; inspected and the spot and prepared the rough site plan showing the place of occurrence with its correct marginal notes. He also lifted the blood stained earth from the spot, turned the same into sealed parcel with his own bearing letters GR which was taken into possession vide memo Ex.PH. He also called upon Gurdip Singh, Finger Prints Expert at the spot. A knife of which blade was broken was found at the spot. SI Gurdip Singh examined the same with the help of suitable developing powder and found one finger impression on such blade and encircled the same with his pen and put his initials as also the date and prepared his report. Ex.PA. SI Gulshan Rai prepared its rough sketch. He also prepared the inquest report Ex.PQ. Post mortem examination on the dead body of Darshna Kumari was conducted at Civil Hospital, Dasuya on 17.07.1995 and the doctor who conducted the post mortem examination found 11 injuries on the dead body. During investigation both the accused were arrested on 21.07.1995 by SI Gulshan Rai and the accused Pawan Kumar on the basis of disclosure statement got recovered a pair of ear rings, clothes of the deceased and bahola. Accused Jasraj also suffered a disclosure statement and pursuant to that disclosure statement, got recovered his shift and broken front part of the knife. After the completion of the investigation, the accused were challenged by SHO Didar Singh.

3. After the appearance of the accused before the court of the then learned Sessions Judge, Shri H.P. Handa, a prima facie case u/s 460 of the Indian Penal Code, was made out against the accused and they were charged accordingly. The aforesaid charge was read over and explained to the accused in vernacular, to which they pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused, the prosecution relied upon the statments of the following witnesses :-

5. PW-1 SI Gurdip Singh, Finger Prints Expert, PW-2, Sohan Singh, PW-3, HC Amarjit Singh, PW-4, Sodhi Lal, complainant who lodged the FIR, PW-5 Ashok Kumar alias Sabbi, step brother of the complainant, PW-6 Dr. Jagdish Singh, who conducted the post mortem examination on the dead body of the deceased and found 11 injuries on the dead body, PW-7 Didar Singh, Deputy Superintendent of Police (Crime), PW-8 Constable Dharam Pal, PW-9 SI Gulshan Rai, investigating officer, and gave up PW Jarnail Singh having been won over by the accused, while SI Jagtar Singh, PHG Rulda

Singh, Constable Mohinder Pal and HC Malkiat Singh were given up as unnecessary. The prosecution after tendering into evidence the report of FSL Ex.PKK/1, Ex.PLL/1, Ex.PMM/1 and reports of the Finger Prints Expert Ex.PNN/1 along with photograph chart Ex.POO/1 closed the evidence.

6. After the evidence of the prosecution was closed, the accused were examined in terms of statement u/s 313 of the Code of Criminal Procedure wherein all the incriminating evidence appearing against the accused were put to them, to which they pleaded innocence and their false implication in this case. It was further stated that Darshna Kumari has been killed by some unidentified persons. Accused Pawan Kumar pleaded that there is a land dispute between his father and the complainant party and due to this reason, he has been falsely implicated in this case and recoveries have been planted by the police. He further stated that he was illegally detained by the police on 16.07.1995 itself but his arrest was wrongly shown on 21.7.1995. Accused Jasraj stated that he was taken into custody by the police on the night of 16.07.1995 and was illegally detained till 21.7.1995 when his arrest was shown and was made to give his finger prints on the wooden handle of the knife Ex.P-1 in the police station by SHO Gulshan Rai under threats and torture.

7. After hearing the learned Public Prosecutor and the learned defence counsel as well going through the evidence brought on the record, the learned Sessions Judge found the accused-appellants guilty of offence punishable u/s 460 of the Indian Penal Code, recorded the order of conviction and sentence as mentioned above.

8. We have heard Shri K.S. Ahluwalia, Advocate, for the appellants and Ms. Reeta Kohli, Senior Deputy Advocate General, Punjab, for the respondents and have carefully gone through the evidence and the other material placed on the record.

9. On behalf of the appellants, Shri K.S. Ahluwalia, learned counsel submits that the case of the prosecution is based on circumstantial evidence and the learned trial court while convicting the accused-appellants noticed the following circumstances :-

(i) Recovery of ear-rings Ex.P2 and Ex.P3 at the instance of Pawan Kumar accused from his house;

(ii) Undervest of Pawan Kumar accused got recovered by him and on the same blood of the deceased was found;

(iii) Recovery of Bahola Ex.P-4 (a sharp edged weapon) by Pawan Kumar, accused;

(iv) Recovery of broken knife Ex.P1 with handle from the spot duly stained with blood of the deceased;

(v) Recovery of front portion of the broken knife by Jasraj accused;

(vi) Recovery of shirt by Jasraj accused stained with blood of the deceased;

(vii) Forensic Science Laboratory reports Ex.PKK/1, Ex.PKK/1 and Ex.PMM/1;

(viii) Finger Prints Report Ex.PNN/1 and Ex.POO/1; and

(ix) Medical evidence wherein it is found that body of the deceased bore as many as 11 injuries.

It has been contended on behalf of the learned counsel for the appellants that when the case of the prosecution rests on circumstantial evidence, the circumstances should be cogently and firmly established, those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused and the circumstance taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. In support of his contention, the learned counsel placed reliance on [The State of Andhra Pradesh Vs. I.B.S. Prasada Rao and Others, .](#)

10. Learned counsel for the appellants contended that motive in the instant case has not been proved by the prosecution. Therefore, the accused appellants deserve to be acquitted of the charges framed against them.

11. This contention of the learned counsel for the appellants is well founded. The motive is the state of mind of the culprit which exclusively remains hidden in his mind. It is obligatory on the part of the prosecution to prove the motive with other circumstantial evidence appearing in the case to establish the guilt of the accused. In Shiva Sahebrao Bobade v. State of Maharashtra, 1973 Cri. App. Reporter 410, where the Apex Court has observed as under:-

Proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the effect of evidence otherwise sufficient. Motives of men are often subjective, submerged and unamenable to easy proof that courts have to go without clear evidence thereon if other clinching evidence exists.

12. It was further observed that "failure of prosecution to establish the motive for the crime, does not mean that the entire prosecution case has to be thrown overboard". It thus follows that no doubt can be cast on the prosecution case even if the motive is absent or is not amply proved. It only casts a duty on the court to scrutinize the other evidence particularly of the eye-witnesses, with greater care. Thus, we shall have to appraise the evidence in this light.

13. According to the learned counsel for the appellants, no case u/s 460 of the Indian Penal Code is made out against the accused. In order to support his contention, the learned counsel referred to the statement of Sodhi Lal PW-4, who in the cross-examination admitted that both the accused were taken away by the police on 16.07.1995 in the night time and they were not let off by the police. He further stated that he did not lodge any report with the police regarding the occurrence which took place 2/3 days before the present occurrence and that on the

date of occurrence he reached the play ground around 6 or 6.30 PM and the sun had not set by the time he reached home. The sun had set after about 5/10 minutes after his arrival at the house.

14. It is relevant to quote hereunder the provisions of Section 460 of the Indian Penal Code, which reads as under :-

Section 460 IPC. - All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them - If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with (imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

15-16. A perusal of Section 460 of the Indian Penal Code shows that the provisions of this Section could be attracted only if the offence is committed only after the sun set. It has also come in the testimony of Sodhi Lal PW-4 that on 16.07.1995 the accused were taken into custody by the police but according to the investigating officer Shri Gulshan Rai, PW-9, both the accused were arrested on 21.07.1995. From the aforesaid deposition of Sodhi Lal PW-4, it is clear that the accused were in the custody of the police from 16.07.1995 to 21.07.1995 but their arrest was shown on 21.07.1995. Thus, the subsequent recoveries alleged to have been made on the basis of disclosure statements made by the accused Pawan Kumar and Jasraj, shows that these recoveries are false and fabricated one. Ashok Kumar, PW-5, son of Ram Chand, who is the step brother of Sodhi Lal PW-4 and the deceased Darshna was his mother, did not support the prosecution case at all. He was declared hostile by the prosecution and when cross-examined totally shattered the case of the prosecution by deposing that the accused-appellants were already in the custody of the police.

17. Learned counsel for the appellants next referred to the statement of Gurdip Singh, Finger Prints Expert PW-1. He deposed that on receipt of message from the investigating officer, he immediately reached at the spot and was shown the scene of the crime by the investigating officer. At the spot he found one knife, the blade of which was in broken condition. He examined the same with the help of suitable developing powder and found one finger print thereon. He developed the finger impression on the blade and encircled the same with his pen. He also put his initials as also the date on the blade. His report is Ex.PA. The learned counsel for the appellants contended that when the accused-appellants were already in the custody of the police, it was very easy for the investigating officer to obtain the finger prints of the accused-appellants and then to get the same examined from the expert.

18. At the end, the learned counsel for the appellants contended that no motive was disclosed by the complainant while recording his statement before the police. He further contended that the motive was set up for the first time when PW-4 Sodhi Lal appeared in the court as a witness and deposed that two days prior to the occurrence there was a dispute between the complainant and the accused party over the cutting of fodder to which Darshna Devi deceased had objected to by saying that some fodder be left for their cattles also and the accused-appellants while leaving the house threatened that she will be eliminated. This statement of PW-4 Sodhi Lal is nothing but an act of improvement which was never the basis of the case setup while suffering the statement Ex.PG before SI Gulshan Rai.

19. It is well settled law that when a case is based on circumstantial evidence, then strong motive is to be proved. In the instant case, the motive to commit the crime was never established but the prosecution tried to establish the same during the deposition of PW-4 Sodhi Lal. Therefore, the testimony of Sodhi Lal PW-4, with respect to the motive part during the trial appears to be an act of improvement and the same cannot be taken into consideration. The prosecution has also not been able to prove on the record that the blood group B found on the clothes of the deceased was that of the deceased because there is no report available on the record to prove this fact. Merely the fact that blood was found on the clothes of the deceased did not prove that the blood was that of the deceased and was of Group B, creates a dent in the prosecution version.

20. The learned Senior Deputy Advocate General, Punjab has only submitted that the case of the prosecution is fully proved beyond any shadow of doubt and the order of conviction and sentence passed by the learned Sessions Judge, is well reasoned order.

21. In the light of our discussion, it is held that the prosecution has not been able to establish the guilt of the accused-appellants beyond any reasonable doubt. Accordingly, the present appeal is accepted and the accused-appellants are acquitted of the charges framed against them. They are ordered to be released forthwith, if not wanted in any other case.