

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

Cr.Acq.Appeal No.34/2015

Date of Order: 29.03.2016.

State	vs	Mohinder Pal and ors.
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Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge
Hon'ble Mr. Justice B. S. Walia, Judge

Appearing counsel:

For the appellant(s)	:	Ms. Deepika Mahajan, DY.AG.
For the Respondent(s)	:	Mr. Nitin Sagra and Mr. Rajesh Kumar, Advocates alongwith Respondents.

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| (i) | Whether approved for reporting in press/media: | No. |
| (ii) | Whether approved for reporting in Law Journal/Digest: | Yes. |
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1. This appeal is directed against the judgment dated 31.01.2015 passed by the Court of Principal Sessions Judge Samba in case (File No.8/Session) titled State versus Mohinder Pal, FIR No.183/2006 Police Station Kathua. The respondents have been acquitted. Dissatisfied therewith State has chosen to file appeal. Leave sought has already been granted.
2. Heard learned counsel for the parties and considered the materials as available on the records.
3. Case registered as FIR No.183/2006 P/S Kathua on completion of investigation culminated in filing Charge-sheet (Challan) against the respondents for having committed offence punishable under Section 302/34 RPC.

Respondents were arrested in the year 2008, so remained in custody till the final decision of the trial Court dated 31.01.2015, when they were acquitted.

4. The case against the respondents hinged on circumstantial evidence. Learned Trial Court after appreciating the entire evidence and considering the whole case has culled out the circumstances as were relied upon by the prosecution so as to bring home guilt against the accused. Same are quoted hereinbelow:

- 1) That a quarrel had taken place between the deceased and the accused Mohinder Pal prior to the occurrence.
- 2) That the deceased was last seen by the prosecution witnesses in the company of the accused Jatinder Kumar, as the deceased was called and taken from his home by the accused Jatinder Kumar with him.
- 3) That the accused persons were found sitting on the platform (Thara) where the deceased was also found lying from the front side down.
- 4) That the accused Mohinder Pal had made a disclosure statement and in-pursuance of the same a towel i.e. weapon of offence was

recovered from the bushes near the place of occurrence.

- 5) That the medical evidence shows that the deceased has died due to asphyxia leading to cardio respiratory failure.

Learned Trial Court has discussed all these circumstances in the context of the evidence as was produced by the prosecution.

5. Circumstance No.1:

Regarding circumstance No.1, after appreciating the evidence it has been observed that PW-Sethi Sharma a close relative of the deceased was lone witness to depose about the earlier occurrence which later on was stated to be cause for the occurrence in which deceased lost life. While deposing, he stated that 3/4 months earlier prior in point of time of the occurrence, accused Mohinder Pal had come to the village and had asked for providing him a room to live which he was not provided. Mohinder Pal accused and deceased had altercation in view of the refusal to provide shelter. The deceased was told by the accused that he will resolve the matter later but during the cross examination he had shown ignorance about the time when the deceased and the accused Mohinder Pal

had altercation. Learned Trial Court has observed that it was strange to notice that the witness did not disclose as to when and where altercation had taken place between the deceased and the accused. Further has observed that PW-Rajinder Kumar and Ram Murti categorically deposed that the deceased and the accused Jitender Kumar were friends. When they were friends, there could be no reason for committing the murder. In addition thereto, it has also been observed that PW-Sethi Sharma had deposed that at the time of altercation 3/4 months back between deceased and accused Mohinder Pal, there were some persons present but those persons have neither been cited as witnesses nor have been examined.

6. Circumstance No.2:

While dealing with this circumstance, learned Trial Court has observed that the prosecution witnesses have deposed before the Court that accused persons were sitting on the platform where the deceased was also found lying from front side down but during investigation, PWs-Rajinder Kumar, Smt. Bindu and Ram Murti had stated that they had seen the accused persons while they were sitting on the platform but while deposing before the Court, they had stated that they had seen the

accused persons beating the deceased. There is total shift in the statements. In addition thereto, at the time of occurrence, it was pitch dark. The prosecution witness has claimed that they had identified the accused persons under the light of torch carried by PW-Rajinder Kumar but nothing has been said about the torch or its seizure. Therefore, story narrated by the prosecution witnesses does not inspire confidence.

7. Circumstance No.3:

Accused Mohinder Pal is stated to have made a disclosure statement, as a result whereof, towel was recovered from bushes near the place of occurrence. Learned Trial Court has noticed that PW-Rajinder Kumar real brother of the deceased has stated that the disclosure statement EXPWRK-3 is correct but he has not qualified as to what were the words used by the accused while making the statement. The witness was required to state atleast as to what were the words uttered by the accused while making disclosure. At the time of recovery, no independent witness has been associated. It has also come in the evidence that when the accused Mohinder Pal made disclosure, he was hand-cuffed, therefore, such disclosure cannot be said to be free from coercion. Same

is hit so has not to be acted upon. Regarding towel, its recovery is stated to have been effected from bushes from an open place where everybody had an access. PW-Rajinder Kumar had stated that on 03.07.2006 that police had gone to a pond through the passage which passes through the bushes. Search was made but did not find anything there. In case towel would have been kept near bushes then police would have found the same on 03.07.2006. That apart, it has not been proved that the towel was used for murder of the deceased. PW-Rajinder Kumar had stated that the accused Mohinder Pal had disclosed that they had dragged the deceased by putting the towel around his neck but the said disclosure is not admissible under law. Towel was stated to have been blood-stained but same had not been sent to FSL to ascertain as to whom that blood belonged.

8. Circumstance No.4:

About last seen, learned Trial Court while referring to the depositions of the witnesses more particularly of PWs-Rajinder Kumar, Smt. Bindu and Ram Murti star witnesses to the case has found discrepancies of magnitude, as PW-Rajinder Kumar had stated that at the time he was called from home he was serving meals to the people. PW-

Bindu has stated that the deceased was sitting on the veranda whereas PW-Ram Murti had stated at that time deceased was singing songs. In addition they had stated that the accused Jatinder Kumar took the deceased from his home whereas investigating officer PW-Jagbir Singh had stated that during investigation it surfaced that the deceased was taken from his uncle's house.

In the first report, based on which FIR has been registered. Names of the assailants have not been made mention of. Last seen theory is also doubtful. The time gap between the deceased having been last seen in the company of the accused and time of murder must be proximate. Hon'ble Supreme Court in the case titled Ramreddy Rajesh Khanna Reddy and another vs. State of A.P. (2006) 10 Supreme Court Cases 172 vis-à-vis last seen theory has ruled as to how it be taken into consideration. Para 27 is relevant to be quoted:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. Even in such a case the courts should look for some corroboration.”

9. Circumstance No.5:

The medical evidence suggests that the deceased had died due to asphyxia leading to cardio respiratory failure but it has not been proved by the prosecution anywhere that the deceased was strangled to death. The circumstantial evidence must be complete in all respects. It must form chain in a manner so as to hold only one inference that the offence is committed by the accused and by none else.

9. The evidence as has been produced by the prosecution is full of contradictions. The chain of circumstances has big gaps. In addition thereto, statements of three star witnesses are full of contradictions.

10. After bestowing our consideration to the entire case and after appreciating the evidence and the findings recorded by the learned Trial Court we are not persuaded to interfere with the judgment impugned, as such appeal being without merit is dismissed.

(B S Walia)
Judge

(Mohammad Yaqoob Mir)
Judge