

BHALINDER SINGH @ RAJU

A

v.

STATE OF PUNJAB

DECEMBER 16, 1993

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

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Indian Penal Code 1860—S.302—Circumstantial evidence—Appreciation of—Held: must lead only to the hypothesis of the guilt of the accused and should not be inconsistent with the innocence of the accused—The prosecution must establish its case which must stand on its own legs—The weakness of the defence cannot be used as a circumstance in favour of the prosecution.

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Code of Criminal Procedure 1973—S.313—A false explanation given by the accused about his innocence cannot be used against the accused unless put to him in his statement recorded under S.313 of the Criminal Procedure Code.

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The prosecution alleged that the deceased has gone out with the accused/appellants one evening in the presence of the father of the deceased. One H also saw the Appellant and the deceased proceeding together towards the Bhakra Canal. G also saw the Accused and the deceased taking liquor together later. D also saw the accused and the deceased sitting on the bank of Bhakra Canal. Five days later an FIR about the missing deceased was lodged by the father of the deceased. The body of the deceased was recovered from the Bhakra Canal. The appellant was traced only two days after the discovery of the body and is said to have made a disclosure statement leading to certain recovery. He was also said to have made an extra judicial confession to the Sarpanch of the village. On the basis of the circumstantial evidence the appellant was convicted by the trial court to imprisonment for life and the High Court affirmed the sentence. Hence this appeal.

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Allowing the appeal, this Court

HELD : 1. The prosecution was unable to explain how the Police started the search for the appellant on 9.7.1986 when there was no information lodged with the Police prior to 13-7-1986 about the absence of the

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A deceased. Investigation is tainted as the investigating Officer has not come out with all the facts and the evidence on record concealed more than it revealed. [1992-H & 993-C]

B 2. The extra judicial confession to the Sarpanch is also unreliable in view of the admitted enmity of the sarpanch with the family of the accused. [1999-E-F]

3. The recovery of the shoes has not been established and the Investigating Officer appears to have fabricated evidence and created false clues. [1994-D]

C 4. The false explanation given by the accused could not be used against him because it was not put to him in his statement recorded under S.313 Criminal Procedure Code. [1994-G]

D 5. The prosecution could not seek conviction on the weakness of the defence case but had to establish its own case capable of standing on its own legs. [1994-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 635 of 1993.

E From the Judgment and Order dated 17.8.1990 of the High Court of Punjab & Haryana in CrI. Appeal No. 284-DB of 1988.

Ujjagar Singh, A.D. Sikri and Ms. Naresh Bakshi for the Appellant.

Ranbir Yadav and R.S. Suri for the Respondent.

F The following Order of this Court was delivered :

G This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana at Chandigarh upholding the conviction and sentence of the appellant for offences under Sections 302/364/201 I.P.C.

H The appellant alongwith Kulwant Singh, Sinder Singh and Piara Singh were tried by the Additional Sessions Judge, Patiala for the aforesaid offences. By judgment dated 23rd July, 1988 the appellant was convicted and sentenced to serve life imprisonment and a fine of Rs. 2,000 under Section 302 IPC. In default of payment of fine, he was further sentenced

to 1 year rigorous imprisonment. Under Section 364 IPC, he was sentenced to 10 years rigorous imprisonment and a fine of Rs. 1,000 and in default to suffer 1 year rigorous imprisonment. For the offence under Section 201 IPC, he was awarded 7 years rigorous imprisonment and a fine of Rs. 500 and in default 3 months rigorous imprisonment. The substantive sentences were to run concurrently while the three co-accused were acquitted. No appeal was filed in the High Court against the acquittal of the three co-accused. The appellant's appeal before the High Court against his conviction and sentence failed.

There is no eye-witness in this case. The case is based on circumstantial evidence. The four circumstances relied upon by the prosecution before the Trial Court and the High Court were as follows :

- (1) Last seen together.
- (2) Recovery of the shoes of the deceased at the instance of the appellant pursuant to a statement under Section 27 of the Evidence Act besides recovery of empty liquor bottles and a glass.
- (3) Extra judicial confessions made before Sarpanch of the village on 16.7.86.
- (4) A false explanation given by the appellant to the father of the deceased. When he went looking for his son on the night of the occurrence.

Reliance was also placed on the alleged motive and the absconding of the appellant but both were found to be feeble pieces of evidence and not given much credence.

According to the prosecution case the deceased Tarsem Singh had returned to the house after doing the masonary work in the house of Mukhtiar Singh at about 7.30 p.m. on 8.7.86 His father Kaka Singh was present at the House. The appellant is alleged to have gone to the house of Kaka Singh and called the deceased and both of them went out of his house together. At about 7.30 p.m. on the same date. i.e. on 8.7.86. Harbhagwan. PW 4, saw the appellant and the deceased proceeding from the house of the deceased towards the Bhakra Canal. The accused and the deceased were also seen together taking liquor by Gurmail Singh PW 5 at

- A about 8.00 p.m. At about 8.45 p.m. Devi Dayal PW 6 saw the deceased and the accused sitting on the bank of Bhakra Canal. When the deceased did not return home, his father Kaka Singh, PW 2, started making enquiries about him and went to the house of the appellant. On enquiry he was told that the appellant might have gone somewhere and would shortly return to the house. It is then the prosecution case that the father of the deceased
- B Kaka Singh, PW 2, continued search for his son but to no avail and then on 13.7.86, he lodged the First Information Report, Exhibit PG. for an offence under Section 364 IPC. The police party swung into action and the dead body of the deceased was recovered from the canal on 15.7.86. The appellant was searched for but was not traceable till 15.7.1986. Sub-
- C sequently, the appellant is alleged to have made a disclosure statement leading to the recovery of two empty liquor bottles and a glass from behind the bushes which were sealed and sent to Malkhana. The appellant is also alleged to have made an extra judicial confession before Parampal Singh, PW 12. Sarpanch of the village, confessing the guilt. The appellant after
- D his arrest made a disclosure statement under Section 27 of the Evidence Act leading to the recovery of a pair of shoes (juti) which were identified by Kaka Singh, PW 2. father of the deceased, as belonging to the deceased. According to the medical evidence, the deceased died of strangulation (asphyxia) and alcohol was found in the blood samples.

- E So far as the circumstantial evidence is concerned. We find not only that none of the circumstance have been established beyond a reasonable doubt but also that all the circumstances, even taken together, do not lead only to the hypothesis of the guilt of the appellant and are not inconsistent with the theory of his innocence. We proceed to give our reasons for this
- F opinion.

- Though, according to the prosecution the father of the deceased, Kaka Singh PW 2, he lodged the First Information Report on 13.7.86 and we also have it from the evidence of PW 19 ASI Mukhtiar Singh I.O. that
- G between 5.7.86 and 13.7.86 no one had given him any information about the missing of Tarsem Singh, deceased or the occurrence, yet during his cross-examination. PW 2 Kaka Singh admitted that the police had started search for his missing son on 9.7.86. Prosecution has been unable to explain how the police started the search for the deceased on 9.7.86, if no information whatsoever either about the missing of the deceased or the com-
- H mission of any offence relating to the deceased had been brought to the

notice of the ASI Mukhtiar Singh between 5.7.86 and 13.7.86. Obviously, the investigating officer has tried to conceal certain facts which expose tainted nature of the investigation. That apart, during his cross-examination. Babu Singh PW 8 deposed that he had seen the appellant alongwith his co-accused behind the bars at the police station on 8.7.1986 at about 9/10 a.m. There is no explanation from the prosecution side about this testimony. The testimony of Kaka Singh PW 2, who admitted that he had been to the police station twice after 8.7.86 and that on 9.7.86, the police started search of his son when considered with the evidence of Harbhagwan. PW 4, Gurmail Singh PW 5, Devi, Dayal PW 6, Babu Singh PW 8 and the evidence of the investigation officer Mukhtiar Singh PW 19 has created an impression on our minds that the prosecution has not come out with all the facts and the evidence on the record conceals more than what it reveals. Thus, the circumstances of last seen together has not been established and is even otherwise not sufficient to connect the appellant with the crime. No explanation has been furnished by the prosecution for the silence of PW 4, PW 5, PW 6 and PW 8 till after the body was recovered even though they all belong to the same village and are known to the family of the deceased.

We are also not impressed with the alleged circumstance relating to the extra judicial confession allegedly made by the appellant before PW 12 Parampal Singh Sarpanch of the village on 16.7.1986. It is admitted by PW 12 that he had contested the election, during the Gram Panchayat elections, against the cousin of the appellant who however, had got defeated. He also admitted that he did not attend the cremation of the deceased or even participate in the Bhog ceremony held on 17.7.1986. PW 12 admitted that he did not have any friendly relation with the family of the appellant, because they belonged to two rival parties. In the state of affairs, we find it difficult to accept that the accused would have gone to PW 12 who was inimically deposed towards his family to make an extra judicial confession. This circumstance, therefore, in our opinion has not been established beyond a reasonable doubt and we cannot place any reliance on the same.

So far as the recovery of the pair of shoes is concerned, it appears to be a very clumsy piece of evidence. According to the investigating officer, the shoes were recovered pursuant to a disclosure statement made by the appellant Exhibit PW 12/C, from the bushes near the mosque in the village and those shoes were taken into possession vide recovery memo Exhibit PW 12/F. The shoes were made into a parcel and sealed and

A deposited in the Malkhana by the Head Constable, Mohinder Singh. Kaka Singh, PW 2. However identified the shoes at the Police Station. It is interesting to note his deposition in his behalf. He stated :

B "In 9/86. I went to P.S. Mulepur where S.I. was sitting, Sarpanch of village Patarsi also came in that room. ASI Mukhtiar Singh asked me to identify the pair of shoes of my son from amongst 3-4 other pairs of shoes. All the pairs of shoes were lying in the office room of S.I./SHO. No body was present when I entered the room of S.I./SHO to identify the shoes. I identified the shoes of my son in the presence of Sarpanch of village Patarsi, (At this stage a pair of shoes has been taken out of a piece of cloth and witness says that these shoes i.e. this pair of Juti Ex P.6/1-2 pertained to his son Tarsem Singh deceased. (Parcel out of which this pair of Juti has been taken out now is not sealed and it was lying open from its mouth).

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D The above statement of Kaka Singh PW 12, exposes the hollowness of the recovery and we have no hesitation to say that the circumstance relating to the recovery of the shoes has not only not been established but also that the investigating officer appears to have fabricated this evidence and created false clues. We rule it out of consideration.

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The recovery of empty bottles and the glass, without any finger prints either of the deceased or the accused on those bottles is hardly of any consequence and we need not detain ourselves to examine that circumstance in any detail.

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So far as the last piece of circumstantial evidence about the alleged false explanation of the appellant is concerned, suffice it to say that it cannot be used against the appellant, not only for the reason that it was not put to him in his statement recorded under Section 313 CR. P.C. but also for the reasons that the mere false explanation, assuming that it was given by the appellant, cannot become basis for conviction of the appellant. The prosecution has to establish its case and stand on its own legs. Weakness of the defence cannot be used as a circumstance in favour of the prosecution.

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H Thus we find that none of the circumstances relied upon by the

prosecution have been established in the case beyond a reasonable doubt and the chain of the circumstantial evidence is so incomplete that it cannot justify the conviction of the appellant at all. The courts below were clearly in error in accepting the circumstantial evidence and convicting appellant on the basis of such flimsy evidence. We accordingly accept this appeal and set aside the conviction and sentence of the appellant and acquit him of all the charges.

The appeal is allowed accordingly.

M.M.

Appeal allowed.