
(2020) 09 P&H CK 0247
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 12-DB Of 2014

Gurvinder Singh Alias Givi

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 16-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2020) 09 P&H CK 0247

Hon'ble Judges : S. Muralidhar, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Ish Puneet Singh, H.S. Grewal

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. This appeal is directed against the judgment dated 27th November, 2013 passed by the learned Additional Sessions Judge, Ludhiana (hereafter, 'trial Court') in Sessions Case No. 49 of 22nd September 2011, convicting the Appellant of the offence under Sections 302/34 IPC in FIR No. 146 dated 30th June, 2011, registered at Police Station (P.S.) Basti Jodhewal, Ludhiana, as well as an order of sentence dated 28th November, 2011, sentencing the Appellant to rigorous imprisonment for life along with fine of Rs. 20,000/- and, in default of payment of fine, to undergo rigorous imprisonment for six months.

Case of the Prosecution

2. According to the prosecution, on 30th June, 2011 a telephone call was received at P.S. Jodhewal, Ludhiana with information about the murder of two persons, viz., Rajiv Kumar @ Monu and Sandeep Kumar @ Sonu in a park located in Gali No. 4, New Subash Nagar, Ludhiana.

3. On receiving the above information, Sub Inspector ('SI') Surinder Singh, along with his police team, reached the spot. There, one Narinder Kumar, son of Hari

Dass, made a statement before SI Surinder Singh to the effect that he sells 'Dhoops' and Candles and had two sons, Rajiv Kumar @ Monu aged 29-30 years and Sanjiv Kumar. Earlier, Rajiv Kumar was working in flats and at the relevant time was idle. He had friendly relations with the present Appellant Gurvinder Singh @ Givi, who was also a resident of New Subash Nagar, Ludhiana.

4. The statement of Narinder Kumar was to the effect that on 29th June, 2011, Rajiv Kumar @ Monu had left the house at 8 am after taking breakfast and did not return for the whole day. At around 10.48 pm, Narinder Kumar received a telephone call from a mobile phone, informing him that Rajiv Kumar @ Monu and Sandeep Kumar @ Sonu, and the present Appellant Gurvinder Singh @ Givi, were seen at a fair at village Mandali and that they would return the following morning.

5. Narinder Kumar further stated that at around 9 am, while he remained at home, became aware that Rajiv Kumar @ Monu and Sandeep Kumar @ Sonu had been murdered and that their dead bodies were lying in a park near Street No. 4, New Subash Nagar. He immediately rushed to the spot; noticed injuries on the face, forehead and head of Rajiv Kumar @ Monu as well as of Sandeep Kumar @ Sonu. According to Narinder Kumar, he met the present Appellant at the spot and asked him about the occurrence. The Appellant is then supposed to have disclosed to Narinder Kumar that at around 1 am in the intervening night of 29/30th June, 2011, he along with Rajiv Kumar @ Monu, Sandeep Kumar @ Sonu, and three others, Bablu and Kishan, residents of village Jagipur and one Kaka, a resident of New Subash Nagar, had come to the park. They had purchased a bottle of liquor and had consumed the same. Thereafter, at around 2.30 pm, the Appellant had left for his house. Since the Appellant did not disclose anything further to Narinder Kumar, the latter suspected that the Appellant had murdered both Rajiv Kumar and Sandeep Kumar with the help of his companions, Bablu, Kishan and Kaka.

6. On the basis of the aforementioned statement, a Ruqa was sent to the police station and an FIR under Sections 302/34 IPC was registered against the Appellant, Kishan, Bablu and Kaka.

7. In the course of the investigation, a site plan of the place of occurrence was prepared and photographs were taken. The blood-stained earth was lifted and a blood-stained brick was also recovered. The statement of Raj Kumar (PW-1), the father of Sandeep Kumar, was also separately recorded. From the spot, five disposable glasses and a broken bottle were recovered.

Arrest, Framing of Charges and the Trial

8. The Appellant was arrested on 10th July, 2011. On 11th July, 2011 a blood-stained iron rod was stated to have been recovered from the possession of the Appellant. The blood-stained earth and iron rod were sent to the office of the Chemical Examiner. On completion of the investigation, the challan against the Appellant was filed. In response to the charge framed against the Appellant

under Section 302 IPC for the commission of murder of Rajiv Kumar and Sandeep Kumar, the Appellant pleaded not guilty and claimed trial.

9. As noticed, no challan was filed as far as Bablu, Kishan and Kaka were concerned. In other words, the Appellant was the sole accused.

10. It is also required to be noticed that the original complainant Narinder Kumar died even before the trial could commence and, therefore, could not be examined as a witness. The prosecution examined ten witnesses, including Rajan Bhargo (PW-10) to whom the Appellant is stated to have made an extra-judicial confession. The injuries on the bodies of the two deceased were sought to be proved through the evidence of Dr. Jasbir Singh, SMO, Mandi Ahmedgarh, who was examined as PW-2. He indicated the cause of death of both deceased to be "shock and hemorrhage as a result of injuries to the vital organs, which was sufficient to cause death in the ordinary course of nature".

Judgment of the Trial Court

11. The trial Court, in the impugned judgment noted that the case of the prosecution rested on three pieces of circumstantial evidence, viz., evidence pertaining to the circumstance of 'last seen', the recovery of an iron rod i.e. the murder weapon, at the instance of the Appellant and, the extra-judicial confession alleged to have been made by the Appellant to PW-10.

12. The trial Court, in discussing the evidence relating to the Appellant being last seen with the deceased, referred extensively to the evidence of PW-1 (Raj Kumar), the father of the deceased Sandeep Kumar. This testimony, according to the trial Court, established that the Appellant was present with the deceased immediately prior to his death.

13. The trial Court next took up the discussion of the extra-judicial confession allegedly made by the Appellant to PW-10. It concluded that the mere fact that PW-10 was unaware of the name of the Appellant's father or of the Appellant's address was "immaterial as it is not unnatural to be ignorant about the parentage and exact address of one's acquaintance". The trial Court noted that the Appellant had come to PW-10 in a drunken condition and had disclosed to PW-10 that he had killed two or three persons.

14. The trial Court next discussed the recovery of the iron rod at the instance of the Appellant. As regards the discrepancy between ASI Avtar Singh (PW-3) mentioning that an iron rod was recovered at the spot and the version of Inspector Surinder Singh (PW-8), the Investigation Officer ('I.O.'), that the iron rod was recovered at the instance of the Appellant, the trial Court observed that PW-3 was "ignorant about the fact as to whether the said rod was taken into possession by the I.O or not". The trial Court further observed that HC Vijay Mumar (PW-5) had corroborated the version of PW-8, regarding the disclosure statement of the Appellant that he had kept concealed "an iron rod near water tank of New Subash Nagar, Gali No. 3 and that he could get recovered the

same". According to the trial Court, a perusal of the site plan of place of the recovery (Ex. PW-8/M) revealed that the place of recovery was a place "which could have been known only to the accused and to none else".

15. The trial Court then concluded that the above three pieces of circumstantial evidence were links "in the chain of circumstantial evidence which leave no doubt about the identity of the accused as being the person who inflicted such injuries on the person of Rajiv Kumar and Sandeep Kumar as were sufficient to cause death in the ordinary course of nature". While the trial Court agreed with the counsel for the accused that the I.O. should have independently proved the role of the other accused in a scientific manner, there was no evidence against the other accused to show how they helped the present accused in the commission of crime. According to the trial Court, the infliction of injuries on both deceased by means of a rod by the Appellant "is very much possible given the condition in which the accused and deceased were present in the Park". For the aforementioned reasons, the trial Court proceeded to hold the Appellant guilty of the offence under Section 302 IPC and sentenced him in the manner noticed hereinabove.

16. This Court has heard the submissions of Mr. Ish Puneet Singh, learned Counsel for the Appellant and Mr. H.S. Grewal, and learned Additional Advocate General, Punjab.

Law on Circumstantial Evidence

17. This is a case of circumstantial evidence, in relation of which the law is well settled. It may be recapitulated in brief. In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the Supreme Court held:

"... the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved, must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. It has been held by a series of decisions of this Court that the circumstances proved must lead to no other inference except that of guilt of accused."

18. In *Rajendra Pralhadrao Wasnik v. The State of Maharashtra* (2012) 4 SCC 37, the Supreme Court held:

"12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion

which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person."

19. More recently, the Supreme Court in Mohd. Yunus Ali Tarafdar v. State of W.B., (2020) 3 SCC 747 reiterated the factors that ought to weigh with Courts in deciding cases predicated on circumstantial evidence, as under:

"14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] , SCC p. 185, para 153; M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , AIR p. 206, para 18.)"

Circumstance of 'Last Seen'

20. With the aforesaid legal position in the background, the Court proceeds to deal with each piece of circumstantial evidence in the case at hand. Specific to the circumstance of 'last seen', the Court takes up for a discussion the evidence of PW-1 Raj Kumar. At the outset, it is required to be noticed that although the original complainant Narinder Kumar had in his statement specifically stated that the Appellant had mentioned to him that apart from the two deceased, Bablu, Kishan and Kaka were also present in the Park and had consumed liquor, PW-1 claimed to have seen only the Appellant present with the two deceased when he reached the park at 11 pm. Importantly, PW-1 further states that "at that time

some other people were also raising noise".

21. Upon being cross-examined, PW-1 disclosed the following crucial facts, viz., that the park in question is surrounded by constructed houses; there is an open plot in the said constructed houses; there is one ration depot near the park; there is one gurdwara and one mandir, which are opposite each other; there is a constructed water tank in the park and there is one quarter/room for residence purpose of the tube-well operator. He was unable to state the name of the tube-well operator or whether the tube-well operator was residing alone or with his family in the said room.

22. Some other crucial facts also emerged in the PW-1's cross-examination on 13th March, 2012. One fact which emerged was that the deceased Sandeep Kumar, had been divorced from his former wife Jyoti and that their relationship was not cordial. However, the most crucial fact that was revealed was in the following statements:

"Police recorded my statement on 7.2.2010 at police station". At that time I was alone. Volunteered said at that time Narinder Kumar also accompanied me when police recorded my statement. Police recorded my statement only one time."

23. The fact that the Public Prosecutor did not conduct any further examination of this witness to clarify the date mentioned by him i.e. 7th February, 2010, when the police had recorded his statement, is indeed a serious lapse. The trial Court missed noticing that when the murder was alleged to have taken place on the intervening night of 29/30th June, 2011, it was inconceivable that the statement of PW-1 about the incident could have been recorded by the police on 7th February, 2010 i.e. more than one year earlier.

24. Although, Mr. H.S. Grewal, learned Additional Advocate General sought to contend that this was a typographical mistake, the fact remains that no attempt was made by the Public Prosecutor to clarify this. It is not clear which part of the aforementioned date of '7.02.2010' is a typographical error. Assuming that the typographical error relates to the year, it could have been only 2012, as an earlier year would not fit the narration. Assuming the date to be '7.02.2012', that would clearly falsify the remaining part of that statement, viz., that Narinder Kumar had accompanied PW-1 and the police had recorded his statement. It will be recalled that Narinder Kumar made his statement on 30th June 2011. Further, the fact of PW-1's statement being recorded nearly six months after the incident itself makes the statement highly doubtful. Why would the statement of such a crucial witness, on whose evidence the entire circumstance of 'last seen' hinges be recorded so late?

25. There is a crucial inconsistency between the statement of Narinder Kumar and PW-1 on the aspect of the number of people present at the park with the deceased at the relevant time. While Narinder Kumar clearly states that the Appellant told him about the presence of three others, viz. Bablu, Kishan and Kaka, PW-1 claims to have not seen the aforementioned three persons. In fact,

they were named in the FIR but dropped at the time of the filing of the challan. It will be recalled that five glasses were recovered from the spot. If there were only three persons, it was incumbent on the prosecution to explain how there were two additional glasses. This attains significance since it had to be conclusively established by the prosecution that it was only the present Appellant who was last seen with the deceased and nobody else.

26. What raises further doubts is the location of the park itself, in a locality which is full of constructed houses surrounding the park. Importantly, the I.O. does not appear to have recorded the statement of the tube-well operator, whose room was inside the park itself. The reply given by PW-1 in his cross-examination appears to indicate that the tube-well operator could have been residing with his family. The failure to record the tube-well operator's statement is again, critical for determining whether there was anyone else in the park whose evidence may have been crucial for determining whether it was the Appellant alone who was present with both the deceased. The Court finds that it would be unsafe to rely only on the evidence of PW-1 to conclude that it was the Appellant alone and no one else, who was last seen with the deceased at the park, during the crucial period i.e. the intervening night of 29/30th June, 2011.

27. There is a very brief discussion of the evidence of PW-1 by the trial Court. That discussion misses the above aspects, which make his evidence doubtful. In the considered view of the Court, the evidence of PW-1 was insufficient to conclusively prove the first link of chain of the circumstances, viz., that it was the Appellant alone who was last seen in the company of the two deceased.

Recovery of the Iron Rod

28. The second circumstance concerns the recovery of the weapon of offence, viz., the iron rod. Mr. Ish Puneet Singh, learned Counsel for the Appellant pointed out that a blood-stained brick was indeed recovered from the spot. The Forensic Science Laboratory ('FSL'), which examined the brick stained with blood, the soil stained with blood, as well as the iron rod stained with blood, gave the result that those exhibits "are stained with human blood". In other words, whether the blood stains matched with the blood group of either of the deceased, was not indicated by the FSL. Therefore, the report of the FSL cannot be said to have clinched the issue regarding the use of the iron rod as the murder weapon in relation to the homicidal death of the deceased. The investigation report also reveals that there were fingerprint experts, who were called at the spot to lift the finger prints from the glasses. It is unclear what the examination of the fingerprints revealed, since there is no report of any fingerprint expert. This indeed would have been a crucial piece of evidence which could have been pursued to its logical end by the I.O.

29. The evidence of PW-3 ASI Avtar Singh clearly indicates that the I.O. took in his possession "four disposable glasses" and "one broken glass bottle". His cross-examination also revealed that "I.O. called Finger print Expert at the spot at

about 10 A.M". Why the Finger Prints on all these objects, if collected, were not further probed, is unclear.

30. The statement of PW-3 in his cross-examination that "one iron rod was recovered at the spot but I do not remember whether I.O. had taken into possession or not" could not have been lightly brushed aside by the trial Court in the manner that it has. It was incumbent upon the Public Prosecutor at this point to have got a clarification on whether this iron rod was different from the one stated to have been recovered at the instance of the Appellant from a place near the water tank. If this was the same iron rod, which was later shown to have been recovered from the Appellant, then clearly it was no recovery in the eye of law. No independent witnesses to the recovery were examined at the trial, throwing into doubt the manner of the recovery of the iron rod near the water tank, which is in the park itself. The non-examination of the tube-well operator who was residing in a room in the park, further throws doubt on the alleged recovery. The evidence of PW-3 seriously contradicts the crucial aspects of the evidence of the I.O., which has been easily believed by the trial Court, as regards the circumstance of the recovery of an iron rod "near the water tank". This has also to be appreciated in the light of the statement made by PW-1 Raj Kumar in his cross-examination that when he went to the park at 11pm and noticed the Appellant and the deceased, he further noticed that "they were not having any weapon in their hands when they were seen by me".

31. The cross-examination of PW-2, the doctor, does not particularly identify the iron rod as being capable of causing the death of the two deceased. In his cross-examination PW-2 simply states that "the injuries could have been done by some heavy blunt weapon. The injuries could have not been occurred without any weapon". What is critical is that PW-2 states in his cross-examination that "no test was done of both the dead bodies regarding the test consuming of alcohol". It would be recalled that the case of the prosecution was that the Appellant was last seen with the deceased drinking liquor in the park. Why the I.O. failed to test the dead bodies regarding this crucial aspect, is unexplained. This also throws into doubt the conclusion reached by the trial Court that the deceased were in an "inebriated state" and that the inflicting of injuries by the Appellant on the deceased by means of the rod "was very much possible given the condition in which the accused and the deceased were present in the Park". In the absence of any scientific evidence, these conclusions by the trial Court are without basis.

Considering that there was no injury whatsoever on the Appellant, it is inconceivable that there was no resistance offered by the two deceased to the injuries inflicted upon them. In any event, these cannot be matters for surmise or conjecture. The recovery of the iron rod as a circumstance by itself cannot be said to have been conclusively proved by the prosecution. In any event, that it was the deceased who inflicted those injuries with the iron rod, certainly has not been proved conclusively by the prosecution.

Extra-Judicial Confession to PW-10

32. The third circumstance is regarding the extra-judicial confession purportedly made by the Appellant to PW-10. At this juncture, it would be noticed that extra judicial-confession by itself is a weak piece of evidence and requires to be corroborated independently. The legal position in this regard has been explained in a number of decisions. In *Sahadevan v. State of Tamil Nadu* 2012 [3] JCC 1756 as under:

"Upon a proper analysis of the above-referred judgements of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The principles:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence
- (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law."

33. Significantly, the Supreme Court has in *State of Rajasthan v. Raja Ram* (2003) 8 SCC 180 emphasised that an extra-judicial confession will have to be proved like any other fact and will depend on the veracity of the witness to whom it has been made. That witness should appear to be unbiased and "not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused".

34. From a reading of the aforesaid decision, three important aspects of an extra judicial confession emerge. One is its voluntariness; the second is its truthfulness; and the third, and most important, is that it must be corroborated. It has been reiterated in a large number of decisions that an extra-judicial confession must be corroborated by other prosecution evidence and should be supported "by a chain of cogent circumstances".

35. This Court has carefully examined the evidence of PW-10 and finds it to be highly improbable that the Appellant would have made an extra-judicial

confession to this witness of having committed the murders. According to PW-10, on 30th June, 2011 at around 2 pm the accused came to his shop and made a confession about his having quarreled with the two deceased. The confession was not to the effect that the Appellant had caused the grievous injuries but to the effect that "they had received injuries and had died due to injuries." Another aspect is that PW-10 appears to have done nothing between 30th June, 2011 when the said extra-judicial confession was made and 14th July, 2011 when he had his statement recorded before the police. According to PW-10, he had told the Appellant, after hearing the extra-judicial confession that he would talk to the police but that the Appellant, who had told him he was going to take tea and return after sometime, did not so return. If that was the position, then it is implausible that PW-10 would think of waiting for two weeks thereafter to make a statement to the police. This renders the testimony of this witness highly unreliable.

36. Crucially, in the cross-examination PW-10 discloses that prior to 30th June, 2011 the Appellant came to his shop "2/3 times for purchase shirts". In other words, the Appellant was not acquainted with PW-10, except to the above limited extent of going to his shop to purchase shirts. From the other replies given in the cross-examination, it is apparent that PW-10 is unaware of the parentage of the Appellant, his place of residence or any other personal details. The trial Court has not even analyzed why the Appellant would make an extra-judicial confession to PW-10 disclosing a highly incriminating fact. The evidence of PW-10 is further rendered unreliable when he states in his cross-examination that on 30th June, 2011 when the Appellant came to him "at about noon", he was "in heavy drunk position". Earlier, in his examination-in-chief, he had not mentioned this fact at all and, in fact, had stated that the Appellant had come to his shop at 2 pm.

37. For the aforementioned reasons, the Court is of the view that the evidence of PW-10 does not inspire confidence and PW-10 cannot be said to be reliable witness to prove the alleged extra-judicial confession made by the Appellant to PW-10.

Conclusion

38. The net result of the above discussion is that none of the three circumstances relied upon by the prosecution to bring home guilt of the Appellant, can be said to have been conclusively proved. In other words, the chain of links of circumstantial evidence cannot be said to have been proved in a manner to conclusively hold that it is the Appellant and, the Appellant alone, who could have committed the murder of the two deceased.

39. Accordingly, the impugned judgment dated 27th November, 2013 of the trial Court, convicting the Appellant and the order of sentence dated 28th November, 2013 of the trial Court, consequent thereto, are hereby set aside. The Appellant be set at liberty forthwith unless required in any other case.

40. The appeal is allowed.