
(2009) 04 P&H CK 0280
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 392-DB of 2000

Kashmira Singh alias Motu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

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

Citation : (2009) 3 RCR(Criminal) 249 : (2009) 3 RCR(Criminal) 224

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

Bench : Division Bench

Advocate : J.S. Bedi, for the Appellant; Navin Malik, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Nawab Singh, J.—The accused-appellant, above named, was tried by learned Sessions Judge, Rohtak for the offences punishable under Sections 302 and 201 of Indian Penal Code (for short `the IPC"). He was convicted and sentenced by judgment of conviction and order of sentence dated July 31st, 2000 as under :

Offence

Sentence

Fine

In default

under Section 302 IPC

Life imprisonment

Rs. 500/-

Three months

2. The accused-appellant preferred the appeal.

3. The factual scenario as highlighted by the prosecution is as follows.

4. Jagdish alias Nanha (deceased) and Kashmir Singh alias Motu accused-appellant were residents of village Ajaib Tehsil Meham, District (Rohtak). They were friends. Deceased was a driver on a private bus. He was also an agriculturist owning six acres of land. In the year 1994, deceased had given Rs. 3000/- on interest to the accused after borrowing it from somebody. In the year 1997, the total amount of loan advanced plus the interest accrued amounted to Rs. 7000/-. Deceased demanded the loan amount back from the accused but he did not pay. On that score, a dispute arose between them. They stopped talking to each other. 4-5 days prior to the occurrence (occurrence took place on May 16th, 1998), the accused again started coming to the house of the deceased. Both of them used to take liquor daily in the evening. On May 16th, 1998 at 7 AM, accused came to the house of the deceased. He, in the presence of Damyanti wife of the deceased, asked the deceased not to go for his duty as he (accused) would throw a party to him and they would drink together. Both of them went to the shop of one Joker in the village and consumed liquor upto 9.30 AM. Thereafter, accused took the deceased in his four-wheeler. Wife of the deceased kept on waiting whole of the night for the deceased but he did not return.

5. It is further the case of the prosecution that on May 17th, 1998 at about 10 AM, there was rumour in the village that a dead-body was lying on the canal passing through the village. Damyanti also reached the canal. Many persons had collected there. Jagdish alias Nanha's dead-body was lying on the embankment of the canal having a Parna around the neck. There was also an injury on the back of his head. Damyanti asked Pawan to inform her mother Krishna at Rohtak. Pawan informed Krishna. She also reached the canal. Krishna informed her daughter that on the previous evening, that is, May 16, 1998, accused and the deceased came to her house in an inebriated condition. She (Krishna) asked Jagdish to stay there but the accused forcibly took him away. She suspected that her husband was killed by the accused after strangulating him by the Parna (a small piece of cloth). She also identified the Parna to be of the accused. She proceeded to lodge report with the Police. Randhir Singh, Station House Officer, Police Station Meham (PW-13) met her on the way. Damyanti made statement (Exhibit PJ) to him. He (SHO) appended his endorsement (Exhibit PJ) and sent the same to the Police Station for registration of the case. On the basis of the same, the formal First Information (Exhibit PJ/1) was registered against the accused under Sections 201 and 302 IPC.

6. Inquest proceedings (Exhibit PC) were conducted and spot was inspected by Randhir Singh SHO (PW-13). Rough site plan (Exhibit PK) was prepared. A few articles belonging to the deceased viz. currency note of the denomination of Rs. 50/-, Identitycard of Jagdish, two photographs of the deceased, five cigarettes and one bundle of Biri were taken into possession vide recovery memorandum (Exhibit PH). The dead-body was sent for post-mortem examination at PGIMS,

Rohtak. After Post-mortem examination, the clothes of the deceased were taken into possession vide recovery memorandum (Exhibit PL).

7. On May 20th, 1998, accused went to Poras Kumar (PW-14) at Panchkula and made extra judicial confession disclosing that he committed the murder of Jagdish and threw the dead-body in the canal on May 17th, 1998 at about 8 PM. On May 21st, 1999, Poras Kumar (PW-14) produced Kashmir Singh alias Motu accused before Baljit Singh Inspector (PW-16) near Bus Stand, Meham. He was arrested. Four-wheeler bearing No. HR-15-3112 of the accused was taken into possession vide recovery memorandum (Exhibit PN). Kashmir Singh was interrogated by Baljit Singh Inspector (PW-16). On interrogation, he made disclosure statement (Exhibit PM) that he (accused) and the deceased consumed liquor on May 16th, 1998 and thereafter, he took him to Rohtak and then at about 8 PM after strangulating the deceased with his Parna, he threw the dead-body in the canal and could point out the spot.

8. In pursuance of the disclosure statement (Exhibit PM), accused led the Police party to the spot. The rough site plan (Exhibit PM/1) was prepared.

9. On completion of investigation and other formalities, the accused was arraigned for trial.

10. Charge. in respect of commission of offences punishable under Sections 302 and 201 IPC was framed against the accused. He pleaded not guilty and claimed trial.

11. In support of its case, prosecution examined sixteen witnesses in all viz. Dr. Narender Singh (PW-1), Satyawan Constable (PW-2), Dilbagh Singh Constable (PW-3), Ajmer Singh Head-Constable (PW-4), Ajmer Singh (PW-5), Rajesh (PW-6), Ram Kumar (PW-7), Samunder Singh (PW-8), Ramesh PW-9), Phool Kumar Head Constable (PW-10), Krishna (PW-12), Randhir Singh, Sub-Inspector (PW-13), Poras Kumar (PW-14), Jai Pal (PW-15) and Baljit Singh Inspector (PW-16).

12. In his examination recorded u/s 313 of the Code of Criminal Procedure, the accused denied the allegations and pleaded that he was implicated falsely.

13. Counsel heard.

14. Admittedly, there is no direct evidence against the accused-appellant. The circumstances relied upon by the prosecution and the learned trial Judge are as follows:

(i) The accused-appellant had taken away the deceased from his house and thereafter he was never seen alive;

(ii) The dead body of the deceased was found on the bank of canal;

(iii) The accused had the motive to murder the deceased as he owed him Rs. 7000/-;

(iv) The accused made extra-judicial confession before Poras Kumar (PW-14) on May 20th, 1998.

15. It has been well established by now that in a case depending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain to prove the guilt of the accused beyond all reasonable doubts. The circumstances so proved must be consistent only with hypothesis of the guilt of the accused. Let the whole case be tested on the aforesaid touchstone. The evidence of last seen consists of Ram kumar (PW-7), Ramesh (PW-11) and Krishna (PW-12). Damyanti (PW-11) has deposed that accused and the deceased left her house at 7 AM on May 16, 1998 and thereafter dead body of the deceased was found on the bank of the canal. Ramesh (PW-9) has stated that deceased and the accused consumed liquor at his shop on May 16th, 1998 at 7 AM. He also drank with them. All of them boarded four-wheeler for Rohtak but on the way, a small tiff took place between them on the point of offering meat to the accused and he (Ramesh) alighted from the four-wheeler and came back to the village. The deceased and the accused went to Rohtak. Krishna has deposed that deceased and the accused came to her house. Both of them were drunk. She suggested the deceased to stay with her. The accused asked her that he would take him to the village. Ram Kumar (PW-7) noticed the deceased and the accused on the bank of the canal at about 7-8 PM. He asked them as to why they were standing on the bank of the canal on which the accused told him that he had no business to ask about it. He (Ram Kumar) left for his village. After covering some distance, he heard some noise. He came back and noticed the accused leaving the spot in his four-wheeler. He did not notice deceased with him at that point of time. He came to the house of Jagdish and informed his mother.

16. If the evidence of these witnesses is read in between the lines, it suggests that the entire story has been cooked up. Ram Kumar (PW-7) had informed the mother of the deceased that he witnessed the deceased and the accused on the bank of the canal on May 16th, 1998 at about 8.30 PM or so but no search for the deceased was made by his wife, mother or any other family member. Had it been so, normal conduct should have been to locate the deceased. Ram Kumar was present on the canal when the dead body was noticed by Damyanti (wife of deceased) and other villagers but Ram Kumar did not inform Damyanti about his having seen deceased and accused together on May 16th, 1998. Had he informed Damyanti, she must have stated so in her statement to the Police that Ram Kumar had seen the deceased and the accused on the bank of the canal on May 16th, 1998 at about 8 PM. It has been also stated by Ramesh (PW-9) and Krishna (PW-12) that deceased and the accused were drunk. The statements of these witnesses stand belied by the medical evidence. The post-mortem examination was conducted by Dr. Narinder Singh (PW-1). The Medical Officer has opined that time elapsed between the death and the post-mortem examination was 24 hours and, no alcohol was found in the stomach of the deceased. According to the prosecution, dead body of the deceased was found

lying on the bank of the canal at 10 AM on May 17th, 1998 and the post-mortem examination was conducted at 12.55 PM on May 18th, 1998 which shows that prior to 12.55 PM on May 17th, 1998, the deceased was alive. Not only that, right from the beginning, case of the prosecution was that deceased was drunk but it was again falsified by the Medical Officer when it has been stated by him that there was no alcohol in the stomach of the dead body. The evidence of Doctor, whose expertise in the field cannot be doubted, suggests that the things did not happen in the manner, they have been projected by the prosecution. Evidence of last seen requires further corroboration by independent material particulars. This being so, the story of last seen is not substantiated and is therefore, repelled.

17. The next circumstance is extra-judicial confession made by the accused before Poras Kumar (PW-14). Per prosecution case, accused made extra-judicial confession before Poras Kumar on May 20th, 1998. Deceased is cousin of Poras. Accused went to Panchkula from his village which is admittedly at a distance of more than 250 kms to make extra-judicial confession. The accused stayed at the house of Poras Kumar. Poras Kumar offered him meals. Why should the accused go all the way travelling 250 kms to make a confession before Poras Kumar. A criminal would not make extra-judicial confession simply for the heck of it. It is only in rare circumstances that a criminal would confess his guilt of murder. Poras Kumar (PW-14) does not hold any special status in the society. What help could be rendered to the accused. Why the accused should make a confession before him. These pertinent questions have gone unexplained. It is rather a sad thing that heinous crimes like murder are committed and our investigating agencies, instead of making use of scientific aids and criminalistics, make short work by setting up extra-judicial confession which has been repeatedly held to be evidence of weak nature. There could be no plausible reason for the accused to make extra-judicial confession before Poras Kumar in this case. It has been then stated by Damyanti (PW-11) that on May 18th, 1998, the Superintendent of Police, Rohtak came in the village and at that time, accused was in the custody of the Police. It appears that this evidence of extra-judicial confession before Poras Kumar is manufactured one so, it fails to inspire confidence.

18. Motive is always there behind the commission of an offence. It may be long standing or may develop on the spur of moment. In cases depending on circumstantial evidence, motive attains more significance whereas in a case of eye witness account, it may take a back seat. In this case, motive for the commission of offence attributed by the prosecution to the accused-appellant is too weak to motivate the commission of murder of a person. As alleged by the prosecution an amount of Rs. 3000/- was taken as loan by the accused way back in the year 1994 and he did not return the same and on that account, the accused killed the deceased. It is the case of the prosecution that both were close friends. The accused had been visiting the deceased at his house regularly in the evening and both of them used to drink together. For some period, the deceased and accused were not on speaking terms. That was only an aberration

in the long standing friendship between them for, the friendship was restituted, they again became friends and used to enjoy drinks together. Long period had elapsed and the amount allegedly involved was not big. The motive alleged does not appeal in the circumstances.

19. It would thus, be seen that a complete chain, of circumstances inevitably leading to the inference of guilt on the part of the accused has not been established.

20. Learned trial Judge fell in error when he held the accused-appellant guilty and convicted him. There was no sufficient or reliable evidence to bring the guilt home.

21. For the reasons aforesaid, the appeal is accepted. The conviction and sentence passed by learned trial Judge are set aside. Consequently, the accused-appellant is acquitted. The appellant is on bail. The bail/surety bonds shall stand discharged.