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(1998) 01 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 172-DB of 1995

Rup Lal and others — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 300, 364

Citation : (1998) CriLJ 3127 : (1998) 1 RCR(Criminal) 796

Hon'ble Judges : V.K. Bali, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Chattar Singh and Harinder Pal Singh, for the Appellant; S.S. Dhaliwal, Dy. A.G., for the Respondent

Judgement

M.L. Singhal, J.—The prosecution case set up at the trial was that Manjit aged 7 years was daughter of Lal Chand son of Buja Ram Adharmi resident of village Bajuha Khurd PS City Nakodar. On 28-3-93 at about 6.30 p.m. she went out of the house to play. She was wearing frock and pyjami (trousers). She was with hair cut. She did not return. He continued searching his daughter in the village as well as in his other relations but could not find any clue to her whereabouts. Eventually on 31-3-93, he lodged DDR No. 6 at 9.30 a.m. at PS Nakodar with regard to the missing of his daughter. At the time he lodged that DDR, he was accompanied by Rajinder Kumar Sarpach. Till 8-4-93 he continued searching for his missing daughter Manjit in the surrounding areas, when he learnt that his daughter had been kidnapped by Malkiat Chand son of Tarsem Adharmi and Rup Lal son of Parkash both residents of village Bajuha Khurd, Lal Chand left for PS Nakodar for reporting the matter to the police along with one Sat Pal Panch and one Gurbachan Dass Panch. He reported the reported the matter to ASI Jatinder Singh vide statement EX. PA who met him in chowk Shankar Road bye-pass Nakodar at about 7 p.m. On the basis of statement Ex. PA, case FIR No. 41 was registered at PS Nakodar u/s 364/34 Indian Penal Code. ASI Jatinder Singh took up the investigation of the Case.

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2. During investigation, it transpired as under :-

Rup Lal and his wife who were issueless were anxious to have a child. Lal Singh accused (appellant herein) was working as chela residing at the well of one Gurmel Singh alias Gela Jat of village Kadian and was making prophecies and suggesting the wearing of tavij etc. and also that people who were issueless were approaching him for getting from him the ways and means of begetting child and he was suggesting them the ways by which they could change the course of nature and be blessed with child. Mohinder Pal was frequent visitor to the dera of Sadh Lal Singh and during the course of his visits, he had seen Rup Lal and his wife Surinder Kaur and Malkiat Chand quite often with Sadh Lal Singh with a view to find from him the ways and means of begetting child for Rup Lal and Surinder Kaur. On 26-3-93, Mohinder Pal went to the dera of Lal Singh. After he had consulted Lal Singh qua his problem, he got up. In the meantime, Rup Lal and his wife Surinder Kaur and Malkiat Chand came there together. They bowed their head before Lal Singh and sat down. Rup Lal told Lal Singh that he was issueless. Mohinder Pal went out of the room with a view to put on shoes. When he was putting on shoes, he overheard the talk that was going on between Lal Singh, Rup Lal and his wife Surinder Kaur. Rup Lal and his wife told Lal Singh that they had been coming to him since long but they had not been able to beget any child. Lal Singh told them that he had performed lot of puja-path to fill their lap with child but as they were being haunted by unlucky and evil stars, they would have to do something unthinkable to appease/propitiate those evil/unlucky stars. Lal Singh told them that he would be suggesting to them very secret ways and means and so that the matter did not fizzle out, Malkiat be sent out. Rup Lal asked Lal Singh not to send Malkiat out as he was more than a brother to him and he had always been with him in any venture which he had undertaken and that in future also whatever they do, they would do it together. Lal Singh told them that for having a child in their lap, they would have to sacrifice the life of an unmarried girl and that Smt. Surinder Kaur would sit on the dead body and take a both and that he would be reciting the necessary mantras of black magic and after Surinder Kaur had taken a both, she will break and throw away the tavij which he was giving her and they could have the child only after they sacrified some unmarried girl and there was no other way to get a child. Malkiat asserted saying that he would stand by them in the fulfilment of this mission. Lal Singh advised Surinder Kaur to keep that tavij concealed somewhere in her residence. Mohinder Pal after he had overheard this talk, put on shoes and left for his house. Mohinder Pal stopped visiting the said Sadh when he came to know that he was indulging in nefarious activities unbecoming of sadhus and nobles. On 8-4-93, he felt a prick to his conscience and decided to disclose to the police what had transpired on 26-3-93 between Lal Singh, Rup Lal, Surinder Kaur and Malkiat Chand at the dera which he had overheard. He went to ASI Jatinder Singh, PW and made full disclosure of the fact known to him. On inkling being felt as regards the alleged kidnapping with intent to murder of Manjit d/o Lal Chand. Offence was converted into one u/s 364/302/120-B/34/201, IPC. On

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9-4-93, Rup Lal was arrested and taken into custody. In pursuance to the disclosure statement alleged to have been made by Rup Lal Ex. PG, the dead body of Manjit daughter of Lal Chand was recovered lying in a gunny bag near the cremation grounds in the wheat field outside the village. Dead body was identified by Lal Chand at the time of the preparation of the inquest Ex. PW 7/C. Dead body was identified by Gurbachan Dass also. Autopsy on the dead body was performed by Dr. J. S. Bajwa, Medical Officer, Civil Hospital, Nakodar on 9-4-93. On 14-4-93, Malkiat Chand, Surinder Kaur and Sadh Baba Lal Singh were produced before ASI Jatinder Singh by Shri Sarpanch of village Bajuha Khurd and they were arrested. During investigation this fact came to the surface that Rup Lal and Malkiat Chand had made extra-judicial confession before Lamberdar Bhag Ram that they had murdered Manjit d/o Lal Chand after they had taken him into confidence. After investigation, Rup Lal, Surinder Kaur, Malkiat Chand and Sadh Baba Lal Singh were challaned u/s 364/302/120-B/34, IPC. Case was committed to the court of Session by Judicial Magistrate First Class, Nakodar vide order dated 27-7-93.

3. Vide order dated 28-8-93, Additional Sessions Judge, Jalandhar charged all the accused u/s 120-B, IPC. He charged Rup Lal, Surinder Kaur and Malkiat Chand u/s 364, IPC. He charged all the accused u/s 302/120B, IPC. Accused pleaded not guilty to the charge and claimed trial. With a view to bring home to the accused the charge levelled against them, the prosecution examined Lal Chand, PW 1, Mohinder Pal PW 2, Gurbachan Dass PW 3, Halqa Patwari Shingara Singh PW 4, Bhag Ram PW 5, Shri Narinder Pal Bhatara PW 6, ASI Jatinder Singh PW 7. Post-mortem report Ex. PF was tendered into evidence as Dr. J. S. Bajwa was said to have been away to USA without there being any prospect of his appearing at the trial in near future. Accused did not take any objection to the post-mortem report being received into evidence without the examination of the doctor. SI Naresh Kumar and HC Kulwant Singh were given up as unnecessary.

4. Accused when examined u/s 313 Cr.P.C. denied the imputations appearing in prosecution evidence against them and stated that it is a false case. It was, however, admitted by each of them that Surinder Kaur and Rup Lal were issueless. In their defence, they examined one Gurnam Singh, Sarpanch of village Ghidan. Besides, the matriculation certificate of Malkiat Chand Ex. DB, electricity bill Ex. DC, copy of voters'' list Ex. DD and caste certificate EX. DE were tendered into evidence.

5. At the conclusion of the trial, Additional Sessions Judge, Jalandhar found the charge u/s 302/120-B, IPC proved against all the accused. He convicted them thereunder and sentenced them to undergo RI for life and to pay fine of Rs. 2000/- on former count and to undergo RI for life and to pay fine of Rs. 2000/- on the latter count. Sentences were ordered to run concurrently. Aggrieved from this order passed by Additional Sessions Judge, Jalandhar, Rup Lal and other-appellants have come up in appeal to this court namely Crl. Appeal No. 172-DB of 1995.

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6. We have heard the learned counsel for the appellants, learned Deputy Advocate General for the State of Punjab and have gone through the record.

7. It may be mentioned at the outset that this case rests on circumstantial evidence; there being no direct evidence in the case. Circumstantial evidence brought on record consists of the following circumstances :-

1. On 26-3-93, Mohinder Pal PW overheard conspiracy being hatched by Rup Lal, Surinder Kaur and Malkiat Chand to murder some unmarried girl to appease the evil stars, Rup Lal and his wife were being afflicted with not allowing them to beget child and Lal Singh abetting them to sacrifice some unmarried girl, so that evil stars felt propitiated/appeased and they beget child.

2. Recovery of the dead body of Manjit in pursuance of the disclosure statement made by Rup Lal on 9-4-93 in the presence of ASI Jatinder Singh and Gurbachan Dass.

3. Extra-judicial confession allegedly made by Rup Lal and Malkiat Chand before Bhag Ram PW-5 that they had happened to kill Manjit d/o Lal Chand.

8. Now the question that we are required to answer is whether these circumstances, from which an inference of guilt is sought to be drawn, have been cogently and firmly established, whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused, whether circumstances taken cumulatively have formed chain so complete that there is no escape from the conclusion that within all human probability crime was committed by the accused and none-else.

9. In order to sustain conviction on circumstantial evidence alone, we have to see whether the chain of circumstantial evidence is complete and incapable of explanation on any other hypothesis than that of the guilt of the accused. Circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. Regarding appreciation of circumstantial evidence, the law laid down by the Supreme Court in State of Maharashtra Vs. Annappa Bandu Kavatage, ; State (Delhi Administration) Vs. Shri Gulzari Lal Tandon, ; Pohalya Motya Valvi Vs. State of Maharashtra, ; Gambhir Vs. State of Maharashtra, and Prem Thakur Vs. State of Punjab, is as follows :-

"It is well settled that before a Court can act on circumstantial evidence the circumstances proved must be complete and of a conclusive nature so as to be fully inconsistent with the innocence of the accused and are not explainable on any other hypothesis except the guilt of the accused.

10. It is also well settled that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused.

11. The principles are that each circumstance relied upon by the prosecution

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must be established by cogent, succinct and reliable evidence; that the circumstances relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incriminating character. All the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

12. The law regarding circumstantial evidence is well-settled. When a case rest upon circumstantial evidence, such evidence must satisfy three tests : (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances taken cumulatively, should form 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. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

13. Lal Chand lodged DDR No. 6 dated 31-3-93 about the missing of his daughter since 28-3-93. Mohinder Pal PW was not stranger to Lal Chand. Lal Chand is Adharmi belonging to village Bajuha Khurd. Mohinder Pal is also Adharmi belonging to village Bajuha Khurd. Manjit d/o Lal Chand was missing since 28-3-93 (6.30 p.m.). He lodged report No. 6 on 31-3-93 at PS Nakodar. Prior to 31-3-93, he searched for his missing daughter in the surrounding areas and in relations. If Mohinder Pal had really seen Rup Lal etc. hatching a conspiracy on being abetted by Sadh Baba Lal Singh on 26-3-93 that if Rup Lal and his wife wanted to have a child, they would have to sacrifice some female virgin to propitiate/appease the evil stars which were afflicting them obstructing the filling of their lap with child, he would have at once gone to Lal Chand and apprised him about that conspiracy. He and Lal Chand belong to the same biradari. He had been meeting Lal Chand. Strange enough, he did not inform him what he had overheard at the dera of Baba Lal Singh that day i.e. on 26-3-1993. Explanation given by Mohinder Pal PW-2 that he did not talk, about the said conspiracy having been hatched at the dera of Lal Singh on 26-3-93 because he had been advised by Lal Singh not to disclose to anyone what had transpired in the dera is hardly convincing because he had not stated so in his statement Ex. DA recorded u/s 161, Cr.P.C. Mohinder Pal has materially improved upon his earlier version and, therefore, he cannot be heard to say that he had been dissuaded from talking over to anyone what had transpired in the dera that day because of Lal Singh''s advice to him in this behalf. In other words, Mohinder Pal did not disclose at all about the alleged conspiracy for 11-12 days. On 8-4-93 also, he appeared before the police at about 7 p.m. in the village when his statement was recorded. Offence was changed into one u/s 302, IPC on 8-4-93

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at 7.15 p.m./7.45 p.m. vide DDR No. 25-26, dated 8-4-93. Mohinder Pal PW 2 was thus introduced at the scene after the registration of the FIR or simultaneously with the registration of the FIR. If Mohinder Pal was introduced after the registration of the FIR on 8-4-93 or simultaneously with its registration, his statement loses its spontaneity and naturalness and it will lie on the prosecution to show that his was a cogent, truthful and natural statement. In villages people are bound by the tie of kinship and fellowship. If anything of the sort had taken place in the presence of Mohinder Pal, he would not have remained silent all these 11-12 days. He would have hastened to inform Lal Chand PW that he had seen Rup Lal etc. at the dera of Sadh Baba Lal Singh on 26-3-93 hatching conspiracy to sacrifice the life of some virgin girl so that the lap of Rup Lal and his wife could be filled with a child. Statement of Mohinder Pal PW 2 thus does not seem to be having any ring of truth about it.

14. If the statement of Mohinder Pal PW 2 is rejected as being unreliable, a very important pillar of the prosecution case on which its edifice rests crumbles.

15. As regards the other circumstances, namely the recovery of the dead body in pursuance to the alleged disclosure statement of Rup Lal on 9-4-93, that can also not be believed because Gurbachan Dass PW 3 is a resident of village Bajuha Khurd while the recovery said to have taken place is in pursuance to disclosure statement alleged to have been made by Rup Lal at Adda Shankar which is at a distance of 3 miles from village Bajuha Khurd. There were a good number of persons in Adda Shankar. ASI Jatinder Singh did not join any of them to lend assurance to the recovery of the dead body in pursuance of the alleged disclosure statement made by Rup Lal. Further, there is no evidence that the dead body alleged to have been recovered by Rup Lal was really the dead body of Manjit aged 7 years. In the DDR No. 6 got recorded by Lal Chand on 31-3-93, he had stated that Manjit had gone to play and she was wearing a frock and pyjami. In the post-mortem report, however, the dead body is shown to have been wearing a blue shirt full sleeved and blue salwar. In the post-mortem report the following features of the dead body have been given :-

"Whole body is rigid but neck is freely mobile in all directions. On dissection : Oesophagus and trachea are lacerated and hyaloid bone is fractured. There is fracture dislocation of 3, 4, 5th cervical vertebra spinal cord.

Swollen and decomposed body of a girl aged about 6-7 years. Both the eye-balls are absent and sockets are full of dark material and maggots. Skin over nose and both jaws on the both sides and middle is absent and both are visible. Maggots are present in left ear and are creeping all over the body and coming out of anus, vulva and whole of face. Skin is peeled off at many places and is discoloured. It is dark over face and head. Patches of dark and light skin are present all over. Wearing blue shirt full sleeved and blue salwar. The whole body is rigid in position due to putrefaction but the neck is freely mobile in all sides on dissection as described above."

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16-17. From these features, it cannot be made out that it was the dead body of a female child aged 7 years. According to the post-mortem report, death had taken place 2 weeks earlier to 9-4-93. In our opinion, it was difficult for the dead body to have been identified after a lapse of 15 days particularly when the same was lying dumped at the time of recovery. In this case the corpus delicti is missing. In the absence of corpus delicti there cannot be proof of murder. As regards the last circumstance i.e. the alleged extra-judicial confession said to have been made by Rup Lal and Malkiat Chand before Bhag Ram that does not inspire confidence in our mind as to its genuineness because Bhag Ram is not shown to have any affinity with them so that they could approach Bhag Ram, confide in him and make a clean breast of their guilt because otherwise human psychology is that nobody confesses that he has committed the offence. Rather, he will conceal the commission of the offence lest he should suffer ignominy in biradari and be put to shame if not legal punishment. Further, it is not believable that if Rup Lal and Malkiat Chand had gone to Bhag Ram on 8-4-93 at about 8-9 p.m., he would not have taken them to the police station for their being arrested. Even otherwise extra-judicial confession is taken to be a weak type of evidence. Extra-judicial confession can be taken along with other pieces of evidence. If other piece of evidence are reliable and can be safely acted upon, extra-judicial confession might provide fillip to that evidence.

18. In this case, thus, there is no chain so far as circumstances are concerned. Each of the circumstances brought on record by the prosecution to bring home to the accused the charge of conspiracy to murder or murder is lying apart. These circumstances do not point unerringly towards the guilt of the accused. In this case, we cannot exclude altogether that the accused are innocent. If we cannot exclude altogether that the accused are innocent, we have to hold that the accused might have been the victim of suspicion. Suspicion, however, strong cannot take the place of proof.

19. All these circumstances are made beads. They do not form rosary because certain links are missing between one bead and the other bead.

20. For the reasons given above, we are of the opinion that the leaned Additional Sessions Judge, was not justified in returning a verdict of guilt against the accused-appellants. So, this appeal is accepted and conviction and sentence against the appellants is set aside and they are acquitted of the charge framed against them by Additional Sessions Judge, Jalandhar. Fine, if paid, shall be refunded to them.

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