

PETITIONER:
SURINDER KUMAR

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 18/11/1998

BENCH:
M.K. MUKHERJEE, G.B. PATTANAIK, S.P. KURDUKAR.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T
M.K. MUKHERJEE. J.

This appeal is directed against the judgment and order dated December 10, 1996 of the High Court of Punjab & Haryana in Criminal Appeal No. 281 DB/94 whereby it upheld the conviction of the appellant under Section 120B/302 I.P.C. Facts relevant for disposal of the appeal are as under :

In the morning of June 28, 1992 one Harvinder Singh (since dead), who was a resident of village Sidhupur, within the jurisdiction of Lohian Police Station, found Vijay Pal, a doctor attached to Veterinary Hospital of Giddar Pindi, lying dead near his field with multiple bleeding injuries on his person. He then rushed to the police station and lodged a report. On receipt thereof S.H.O. Amrik Singh (O.W.10) took up investigation and went to the spot. He held inquest upon the dead body of Dr. Vijay Pal and sent it for post-mortem examination to the local hospital. Dr. V.K. Khullar (P.W.1) held the examination and found twenty seven incised injuries on the person of the deceased. It is alleged that 5/6 days after the murder, the appellant, his two brothers Varinder Kumar and Narinder Kumar, and one Sukhbinder Singh @ Sukha met Shangara Singh (P.W.6), who was the Chairman of the Market Committee of Lohian, and confessed that they had committed the murder. After making the confession they requested him to produce them before the police as they were harassing their family. P.W.6 asked them to contact him after a day or two but heard from them. During the pendency of the investigation Narinder Kumar and Sukhbinder Singh died and, hence, on completion of investigation, P.W.10 submitted charge sheet against the appellant and his brother Varinder Kumar for committing the murder of Dr. Vijay Pal pursuant to a conspiracy hatched by all four of them.

The alleged motive for the murder was that a few days before the incident the appellant, who was earlier the Veterinary doctor of Giddar Pindi, was served with an order of transfer and the deceased was to replace him. Since the appellant was reluctant to leave Giddar Pindi, he locked the gate of the hospital so that the deceased could not take

over charge. Finding the hospital locked, the deceased joined his duties by affixing a slip on its outer gate and made a representation to his senior officers about his predicament. A Committee of three doctors was then constituted and sent to ensure that the charge of the hospital was handed over to the deceased. Under orders of the Committee the appellant handed over charge to the deceased on June 27, 1992. At that time the appellant and his brother Varinder Kumar threatened the deceased with dire consequences.

The accused persons denied the accusation levelled against them and contended that they were falsely implicated in the case at the instance of P.W.6 and the Police. They asserted that they did not make any confession before P.W.6. indeed, according to them, they were arrested by the police in June 28, 1992 and were in their custody on the date the confession was allegedly made. The further plea of the appellant was that his transfer and that of the deceased were on request and hence the question of his bearing any grudge against the deceased did not and could not arise. In support of their respective cases the prosecution examined eleven witnesses and the defence examined three.

In absence of any eye witness to the murder the prosecution rested its case upon the evidence adduced relating to the extra-judicial confession made by the four accused persons and the motive. Accepting that evidence the trial Courts convicted the appellant and his brother and the High Court dismissed the appeal of the former, while allowing that of the latter.

Having carefully gone through the entire evidence on record, we are unable to hold that the prosecution had been able to conclusively prove the charge levelled against the appellant. Coming first to the extra-judicial confession, we find that the evidence of P.W.6, who only testifies about it, is improbable and lacking in credence. It does not stand to reason - rather it seems odd - that all the four accused persons should be seized at the same time by a mood to approach P.W.6 to make a joint confession. It is significant to note that they had no particular relationship or connection with P.W.6, so as to confide in him and take his assistance for surrendering before the police. If really, they wanted to surrender - as is the evidence of P.W.6 - we fail to understand why instead of going to the Police they would approach him and blurt out a confession before him. Another compelling reason which makes the evidence of P.W.6 in this regard suspect is that even though he was, admittedly, close to the family of the deceased, he did not disclose the names of the accused persons to Mrs. Nirmal Pal (P.W.2), the wife of the deceased, who lived at a distance of one furlong from his house and was not aware as to who killed her husband. His claim that he told P.W.10 about the confession on July 5, 1992 is also not corroborated by him (P.W.10). While on this point it is pertinent to mention that in the remand application that P.W.10 filed on July 10, 1992 after producing the accused before the Magistrate concerned he did not disclose that they had made a confession before P.W.6. From the impugned judgment we find that when this aspect of the matter was brought to the notice of the High Court by the appellant's counsel it observed that all details were not required to be given in that application. We are unable to share the above view of the High Court for if really such a confession was made before P.W.6 and told to P.W.10. it was expected that in praying for the remand of the accused, he (P.W.10) would refer the same, for that was the only material on which the

prosecution could primarily rely in justification of such prayer. For the foregoing reasons we are unable to accept the claim of P.W.6 that the appellant and other accused made a confession of their guilt before him.

That brings us to the other circumstance: the appellant had a motive to commit the murder. Even if we proceed on the assumption that the prosecution has succeeded in proving the same, it would not further its case - in absence of proof of any other circumstance pointing to the guilt of the appellant. The evidence adduced by the prosecution in support of the motive, therefore need not be detailed and discussed.

On the conclusions as above, we allow this appeal, set aside the conviction of the appellant and acquit him. Let the appellant, who is in jail, be released forthwith.

JUDIS