

PETITIONER:
BALBIR SINGH & ANOTHER

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 20/08/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (7) 342 1996 SCALE (6)72

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This Criminal Appeal is directed against the judgment and order dated June 24, 1985 passed by the Sessions Judge, Special Court, Ferozepore, convicting both the appellants - accused for an offence punishable under Section 302/34 IPC.

2. The appellants - accused were put up for trial before the Special Court for committing the murder of Harbit Singh alias Raju aged about five years. He was the son of Mahinder Singh, the brother of Inder Singh (P.W.6). It is the case of the prosecution that on December 14, 1984, Raju while playing along with his friends in front of their house, was found missing in the evening. A missing information was lodged with the relatives of Raju searched him throughout the night but could not trace him. However, on 15th December, 1984 at about 7 p.m. these witnesses noticed a crowd near the DAV College and after going there they found the dead body of Raju lying near the school compound. They also noticed that the amulet and rod which were worn by the deceased Raju were missing. An FIR was then lodged with the police station, city Fazilka and thereafter investigation commenced. During the course of investigation on 31.1.1985, the accused came to be arrested. The accused being interrogated made a statement under Section 27 of the Indian Evidence Act which led to the recovery of amulet. It also transpired during the investigation that the accused made an extra judicial confession before one Pala Singh (P.W.7), a Municipal Commissioner at Fazilka. As regards motive, the prosecution case was that in the year 1971 Inder Singh (PW 6) who was then unmarried, had a love affair with Dialo, a sister of Balbir Singh (A-1) and once they were caught in a compromising position. On seeing this Balbir Singh (A-1) was terribly upset and on two occasions he had challenged Inder Singh and told him that he will take a revenge at the appropriate time. This love affair, according to Inder Singh ended after he got married. Dialo was also

married very soon after the said incident. After completing the investigation the accused were tried for the aforesaid offences.

3. Both the accused pleaded not guilty to the charge and claimed to be tried. According to them they are innocent and they have been falsely implicated in the present crime.

4. The prosecution in support of its case relied upon the evidence of as many as nine witnesses which included Mohinder Singh (P.W.5), the father of the deceased Raju, Inder Singh (P.W.6) the brother of Mohinder Singh and other formal witnesses.

5. It is not and cannot be disputed that Raju met with a homicidal death. It is needless to set out the various injuries that were found on the dead body of Raju. Dr. Inder Muhan Challana (P.W.1), who performed the autopsy stated that Raju died due to several ante mortem injuries. It can, therefore, be safely concluded that Raju met with a homicidal death.

6. At the outset it may be stated that the prosecution case rests upon circumstantial evidence. The learned trial judge in paragraph 19 in his Judgment pointed out five circumstances (A to E) and according to him each one of them has been conclusively proved by the prosecution and these circumstances if put together complete the chain of circumstances to prove the guilt of the accused.

We may also state that the learned counsel appearing for the parties did not dispute that these are the only five circumstances on which the entire prosecution case rests:

- (1) Motive;
- (2) Medical evidence;
- (3) Foot prints at the spot;
- (4) Recovery of amulet and thread: (see sic rod) and
- (5) Extra Judicial confession by the accused

7. Coming to the first circumstance, namely, the motive, it is stated by Inder Singh (P.W.6) that he had developed illicit relations in the year 1971 with Dialo, the sister of accused No.1 and because of this, accused had a grudge against his family members. On two occasions the accused No.1 had challenged to take revenge. He admitted that immediately thereafter he as well as Dialo were married separately and thereafter no such relationship continued. This circumstance found favour with the trial Judge but in our opinion having regard to the passage of time and in the absence of any incident during this long period of 14 years it would be very difficult to accept the evidence of this witness as regards the alleged motive. It is equally improbable that A-1 would kill an innocent boy (Raju) who was then just five years old. If at all accused No.1 had any grievance it could be against Inder Singh and not against an innocent child. In this view of the matter we are of the opinion that the learned trial judge has committed a great error in upholding that the prosecution has proved any motive for the murder.

8. As far as the second circumstance, namely, medical evidence is concerned as indicated earlier there is no challenge whatsoever to the said evidence and we may safely conclude that Raju met with a homicidal death.

9. Coming to the third circumstance, namely, foot prints, this circumstance is although proved by the prosecution but in our opinion it is a very weak circumstance and on the basis of prints it be conclusively said that these cannot prints were of the accused. It may also be stated that only two foot prints were found whereas there are two accused which means there ought to have been four foot prints. There is no explanation whatsoever given

by the prosecution in this behalf as also there is no positive evidence to indicate as to whose foot prints they were. In our opinion the learned trial Judge was wrong in accepting this as a conclusive circumstance to establish the complicity of the accused in the crime.

10. Coming to the next circumstance namely, recovery of amulet and rod pursuant to the statement made by the accused No.1 under Section 27 of the Indian Evidence Act, in our opinion this recovery is again a weak piece of evidence because there were no special identity marks on both of these art viz circumstance, therefore, is not conclusive to prove the complicity of the accused.

11. Coming to the last circumstance, namely, extra judicial confession alleged to have been made by accused No.1, Balbir Singh to Pala Singh (P.W.7), Municipal Commissioner, Fazilka Municipal Committee, it has come on the record that this witness had no special friendship with either of the accused. Pala Singh (P.W.7) in his evidence had vaguely stated that after about one and half month of the incident Balbir Singh, accused No.1 contacted him and he presence of Sajjan Singh, accused No.2 confessed the crime. After through the evidence of this witness we are unable to accept his evidence as trustworthy. It may also be stated that as far as Sajjan Singh, accused No.2 is concerned there is no evident whatsoever to connect him with the crime.

12. After going through the entire evidence the record we are satisfied that the impugned order of conviction and sentence is based on mere surmises and therefore, the impugned order of conviction and sentence based against both the accused is quashed and set aside and are acquitted. The appeal is allowed.

13. This Court on 7.4.1992 ordered both the accused to be released on bail to the satisfaction of Sessions Judge, Ferozepur. If the accused were released on bail pursuant to the said order, their bail bonds in stand cancelled. In the event they were unable to avail of that order, they be get at liberty forthwith if not required in any other case.