

CASE NO.:
Appeal (crl.) 948 of 2001

PETITIONER:
KULDIP SINGH AND ANOTHER

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 14/08/2002

BENCH:
N. SANTOSH HEGDE & BISHESHWAR PRASAD SINGH.

JUDGMENT:

Bisheshwar Prasad Singh, J.

This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana at Chandigarh dated 13.02.2001 in Criminal Appeal No.439 (DB) of 1997, whereby the High Court dismissed the appeal preferred by the appellants and confirmed the judgment and order of the learned Additional Sessions Judge, Ferozepur dated 29.4.1997 in Sessions Case No.76 of 1994, Sessions Trial No.43 of 1997 finding the appellants guilty of the offences under Section 302 and 201 IPC and sentencing them to undergo rigorous imprisonment for life under Section 302 IPC and rigorous imprisonment for two years under Section 201 IPC.

The appellants along with one Jasbir Singh were accused of having committed the murder of Kuldeep Kaur, the wife of the informant, and Soni, the daughter of the informant. Since, it was found that Jasbir Singh was a juvenile, his case was separated for trial by the competent court. We are informed that he has since been acquitted. The appellants herein were acquitted by the trial court of the charge levelled against them for the murder of Soni, which order has been affirmed by the High Court.

The informant, Sucha Singh is the elder brother of Kuldeep Singh, appellant No.1. Bakshish Kaur, appellant No.2 is the wife of the younger brother of the informant namely, Gurmit Singh. The victims were the wife and daughter of the informant.

The FIR was lodged by Sucha Singh, PW-6 on 19.02.1994 at 8.15 p.m. In his report the informant stated that he was a resident of village Pirojwal Mangal Singh. He has three younger brothers namely, Gurmit Singh, husband of accused No.2, Surjit Singh and Kuldeep Singh, appellant No.1. They all resided in the Dera constructed by them in their fields. Kuldeep Singh, the youngest brother was unmarried. The informant was married twelve years ago to Kuldeep Kaur (deceased) and they had four children, the eldest being a daughter, Soni aged about 9 years. The informant was employed as a Foreman at a Sheller at Moga. His younger brother, Gurmit Singh, husband of appellant No.2, was

also employed as a Foreman at a Sheller in Bhuche Mandi. About three years ago Gurmit Singh was married to Bakshish Kaur, appellant No.2. Last year there were disputes between his wife, Kuldeep Kaur (deceased) and the wife of Gurmit Singh, namely, appellant No.2, Bakshish Kaur. The disputes related to the partition of the house, clothes and jewellery etc.. Such disputes were a regular feature. On 02.01.1994, which was a Sunday, when the informant came home on the weekend he was told by his wife Kuldeep Kaur (deceased) that there was again a quarrel with Bakshish Kaur, appellant No.2 regarding distribution of jewellery etc.. Appellant No.2 had threatened her that she must leave this house or else she will finish her. On 03.01.1994, while going on duty the informant assured his wife that he will take premises on rent at Moga and shift his family.

On 06.01.1994 Bakshish Kaur, appellant No.2 came to his work place at Moga and informed him that his wife was missing since last night, and his daughter had died on account of electric shock. He immediately rushed to his Dera and found his daughter dead. The left hand of his daughter was charred, perhaps on account of electric shock. The informant was perplexed and disturbed and in that state of mind acceded to the advise given to him by the appellants to throw away the dead body of Soni in the Satluj river. On 07.01.1994, he appeared before Malkiat Singh, ASI, Incharge Chowki P.P. Kamalke and reported regarding his missing wife. He was ever since searching for his wife.

On 19.01.1994, Resham Singh, PW-7, informed him that his wife who used to take milk from him regularly, did not come to take milk on 05.01.1994. He, therefore went to her house at about 7 p.m. There he heard raula (noise) and saw appellant No.2, Bakshish Kaur and her brother, Jasbir Singh catching hold of Kuldeep Kaur by her legs while Gurmit Singh, appellant No.1 was strangulating her. Kuldeep Kaur died, but out of fear this witness did not talk to anyone. On the basis of the information given to him by Resham Singh, the informant, was lodging the FIR complaining that Jasbir Singh had killed his wife as well as his daughter and had concealed the body of his wife. The FIR further records that the informant along with Resham Singh were going to the police station for registration of the case when they met the Station House Officer at Dharamkot bus stand, and the report was recorded there.

The case was investigated by Surinder Pal, Sub Inspector, PW-12. After recording FIR, he searched for the accused on that day but he could not trace them out. On 20.02.1994 he again searched for them but they were not traceable. On 21.02.1994, Buta Singh, Sarpanch, PW-8, produced all the three accused before him and he interrogated them separately. He first interrogated Kuldeep Singh whose voluntary statement was recorded (Ex. PN), thereafter he interrogated Jasbir Singh and Bakshish Kaur, appellant No.2 whose voluntary statements were recorded which have been marked Ex. PO and Ex. PQ respectively. From the voluntary statements made by them it became known that the body of Kuldeep Kaur had been concealed in the courtyard of Kuldeep Kaur under a heap of Parali. He, therefore, sent a written request to the Sub Divisional Magistrate, Zira for permission to exhume the dead body of Kuldeep Kaur. The medical officer was similarly requested for post mortem examination of the dead body. Shri Inder Dev Singh, Naib Tehsildar was deputed to supervise the proceeding, Dr. Rachhpal Singh Sandhu, medical officer had also come to the place of occurrence. In the presence of all these persons the dead body of Kuldeep Kaur was exhumed and memo Ex. PK was prepared which was attested by the informant, Sucha Singh, Inder Dev Singh, Naib Tehsildar, the Medical Officer, Dr.

Rachhpal Singh and Sukhvinder Singh, PW-10.

The case of the prosecution is that the three accused had come to the house of Buta Singh, PW-8 on 21.02.1994 and had told him that the police was searching for them and that he should help them since he had considerable influence with the police. They had confessed before him that they had committed the murder of Kuldeep Kaur. The prosecution, therefore, in support of its case pressed into service the extra judicial confessions said to have been made by the accused before Buta Singh, PW-8.

Apart from Resham Singh, PW-7, who claimed to be an eye witness, the case of the prosecution rests on circumstantial evidence. The circumstances on which the prosecution relied are two, namely, confessions made by the appellants before the Sarpanch, Buta Singh, PW-8, and voluntary statements made by the accused before the Investigating Officer resulting in the discovery of the dead body of Kuldeep Kaur. Since Resham Singh resiled from his statement made in the course of investigation and categorically stated that he had not seen anybody committing the murder of Kuldeep Kaur, and reported nothing to anyone, the courts below have rightly held that his evidence is of no help to the prosecution. The courts below have recorded finding of guilt, on the basis of these two circumstances.

It was contended before us on behalf of the appellants that the courts below have erred in relying upon these two circumstances which were not even established by cogent evidence on record. The evidence adduced by the prosecution was contradictory and created a grave doubt about the truthfulness of the prosecution case. He submitted that the very first requirement in cases that rested on circumstantial evidence, namely that the incriminating circumstances in the first instance must be established by cogent and reliable evidence, was not fulfilled. Having regard to the submission urged before us we now proceed to examine the relevant evidence on record.

We shall first examine the evidence of PW-7 who, as stated earlier, was declared hostile to the prosecution. He has stated that he knew the family of the appellants who were having their residence in their fields. He also admitted that Kuldeep Kaur, wife of Sucha Singh used to collect milk from his house and that Kuldeep Kaur (deceased) and Bakshish Kaur, appellant No.2 used to frequently quarrel. He, thereafter, went on to state that on 05.01.1994, he had gone to Moga to recite Akhand Path, and in his absence Kuldeep Kaur (deceased) had collected milk from his house. On the next day he heard that the daughter of Sucha Singh namely, Soni had died on account of electric shock. He had, therefore, gone to the house of Sucha Singh for condolence. He categorically stated that he had not seen anyone committing the murder of Kuldeep Kaur.

From the cross examination of this witness, it appears that in the course of investigation his statement was recorded under Section 161 Cr. P.C. wherein he had stated that on 05.01.1994, Kuldeep Kaur as usual had not come to collect milk and after waiting he had gone to the Dera of Sucha Singh at about 7 p.m. and had witnessed the murder of Kuldeep Kaur from a distance. He had seen that in the room of Gurmit Singh, Bakshish Kaur, appellant No.2 and Jasbir Singh, her brother, had caught hold of Kuldeep Kaur from her legs while Kuldeep Singh strangled Kuldeep Kaur to death. He had not narrated this incident to anyone out of fear. He denied having narrated this incident to Sucha Singh. He even denied having accompanied Sucha Singh to the police station and that on 19.02.1994 the FIR was recorded in his presence. He

was confronted with his statement under Section 161 Cr. P.C. but he denied having made any such statement.

In our view the courts below have rightly held that the evidence of Resham Singh is of no help to the prosecution. We are then left with the evidence led by the prosecution to establish the two circumstances on which the case of the prosecution rests. We shall first consider the evidence relating to the confession said to have been made by the appellants before the Sarpanch, Buta Singh, PW-8. PW-8 deposed that on 21.02.1994, all the three accused came to his house and told him that they were being chased by the police and have therefore come to him since he had influence with the police. They confessed before him that they had committed the murder of Kuldip Kaur and Soni as there used to be frequent quarrels between Kuldip Kaur and Bakshish Kaur. According to PW-8, nothing else was told to him. Leaving all the three accused in his house he proceeded to the city but met Surinder Pal, SHO, PW-12 on the canal. He informed him that all the three accused were with him and he wanted to produce them before him. PW-12 asked him as to when he would produce the accused and he told him that if they could stay there for some time he will produce them immediately. Thereafter, he went to his village, brought all the accused with him and produced them before PW-12. His statement was recorded by the police. He denied to have told the police that he had told the accused persons who had confessed before him that they should come after a day or so and that in the meantime he would talk to the officers concerned, and that the accused had left his house. He also denied to have stated in his statement under Section 161 Cr. P.C. that on 05.01.1994, Jasbir Singh had met his sister Bakshish Kaur and they along with Kuldip Singh had conspired to eliminate Kuldip Kaur. He also denied having stated that Bakshish Kaur, appellant No.2, had invited Kuldip Kaur to her house and when Kuldip Kaur came to her room she was strangled by Kuldip Singh, while Bakshish Kaur and Jasbir Singh caught hold of her by her legs. He also denied having told the police that after some time Soni, daughter of Kuldip Kaur aged about 9 years came to the house of Bakshish Kaur and on seeing her mother dead she started weeping. The accused apprehending that she may disclose their secret electrocuted her with live electric wire.

It will thus appear that the version given by this witness before the Court is quite different from the version in his statement under Section 161 Cr. P.C. This witness cannot be said to be reliable, and therefore, one has to critically scrutinize his evidence before acceptance. As regards the production of the accused before the police, he stated that the accused were not interrogated in his presence, neither was his signature obtained by the police on any paper regarding production of the accused. He categorically asserted that he had produced the accused on 21.02.1994 and his statement was recorded on that day. His statement was not recorded by the police on 20.02.1994. This witness asserted that in the statement made by him in the course of investigation he had told the police that all the three accused were in his house and further told PW-12 that he would produce them before him where upon PW-12 asked him as to when they would be produced and he replied by saying that he could produce them right away. He was confronted with the statement recorded under Section 161 Cr. P.C. where it was not so recorded.

From the evidence of Buta Singh, PW-8, it is evident that the accused confessed before him on 21.02.1994 and on that very day he produced them before the police when his statement was also recorded. He categorically denied the fact that his statement was recorded on 20.02.1994.

On the other hand, we have the evidence of PW-12, the Investigating Officer. He has stated that he had searched for the accused on 19.02.1994 but they could not be traced. On 20.02.1994 also he searched for them but they could not be found. On that day Sarpanch of the village came to the place of occurrence and gave a statement before him under Section 161 Cr. P.C. On the following day, i.e. 21.02.1994, when he along with other police officials was present on the bridge of the canal, the Sarpanch, namely, Buta Singh produced the three accused before him. It would thus appear that according to the Investigating Officer the statement of Buta Singh was recorded on 20.02.1994. On the following day, he produced the accused before him. There is obvious inconsistency in the testimony of these two witnesses. The case of the prosecution as put forth before the Court is that the accused were produced by Buta Singh, PW-8 before the Investigating Officer, PW-12 on 21.02.1994. The question is as to when the accused confessed their guilt before Buta Singh, PW-8. If Buta Singh is to be believed, the accused confessed their guilt before him on the same day on which he produced them before the police. According to him, the accused were waiting in his house while he went to meet the police officer. He categorically denies having made any earlier statement before the police on 20.02.1994. On the other hand, according to the Investigating Officer, PW-12, Buta Singh had made statement before him on 20.02.1994 and had thereafter produced the accused before him on 21.02.1994. The evidence of these two witnesses gives rise to a lot of uncertainty as to whether the confessions were made on 20.02.1994 or on 21.02.1994 and also whether the accused were taken into custody on 20th or 21st February, 1994. If it is believed that Buta Singh had produced the accused before the police on the same date on which he made a statement before the Investigating Officer, then it must follow that the accused were taken into custody on 20.02.1994. If the confessions were made by them on 21.02.1994 while in custody, they will be inadmissible in evidence. At the same time there is considerable doubt as to whether the confessions were made before Buta Singh on 20.02.1994. As it is, an extra judicial confession, is considered to be a weak type of evidence. In the instant case such extra judicial confession is said to have been made before a witness who stands thoroughly discredited in his cross examination. He has resiled from the version disclosed by him in the course of investigation and recorded under Section 161 Cr. P.C. His evidence does not inspire confidence. In addition, his evidence read together with the evidence of PW-12 creates considerable doubt as to whether the accused confessed their guilt before Buta Singh, PW-8 on 20.02.1994 or 21.02.1994.

Counsel for the appellants drew our attention to Ex. PC, which was the requisition sent by the Investigating Officer to the Sub Divisional Magistrate, Zira requesting him to get the body exhumed. His letter states that the accused had admitted having committed the murder of Kuldeep Kaur. The Investigating Officer in the course of his cross examination has admitted that the date written on the said requisition was 20.02.1994 but the same has been struck off and in its place the date 21.02.1994 has been written. In normal course we would not attach much significance to such correction being made, but having regard to the evidence on record this correction of the date on Ex. PC acquires significance. Having regard to the evidence on record, we are satisfied that the evidence adduced by the prosecution to establish the fact that the appellants had confessed before Buta Singh on 21.02.1994 is inconsistent and does not inspire confidence. The prosecution, therefore, has failed to establish the first circumstance in the circumstantial chain.

The second incriminating circumstance relied upon by the

prosecution is that after the accused were produced before the Investigating Officer, PW-12, they were interrogated separately and in the course of interrogation they made voluntary statements leading to the discovery of the dead body of Kuldeep Kaur. Accordingly, the body was exhumed and post mortem examination conducted over the dead body of the deceased which was identified to be that of Kuldeep Kaur.

According to PW-12, after the accused were produced before him by Buta Singh, Sarpanch, PW-8, he first interrogated Kuldeep Singh who made a disclosure statement that he along with Bakshish Kaur and Jasbir Singh had kept concealed the dead body of Kuldeep Kaur under a heap of Parali lying in the courtyard of the house of Kuldeep Kaur which he only knew and could get the same recovered. The disclosure statement was reduced into writing and the same was proved by him and marked as Ex. PN which is signed by appellant Kuldeep Singh and attested by ASI, Niranjan Singh and Head Constable Chamkaur Singh. Thereafter he interrogated Jasbir Singh who made similar statement which was recorded and exhibited as Ex. PO. Lastly, he interrogated Bakshish Kaur, who also made an identical statement. Her disclosure statement was exhibited as Ex. PQ. Exhibits PN, PO and PQ, the three disclosure statements have been recorded by the Investigating Officer, PW-12. We have perused the disclosure statements and we find that the Investigating Officer has made an obvious mistake while stating that the accused had stated that the body was kept concealed under the heap of Parali in the Dera of Kuldeep Kaur. In fact the disclosure statements are to the effect that the body has been kept concealed in the Dera of Gurmit Singh, husband of Bakshish Kaur.

Pursuant to the disclosure statements the Investigating Officer, as earlier noticed, sought directions of the SDM to exhume the dead body and also requested the medical officer to perform the post mortem examination. The prosecution led evidence to prove that the body was exhumed and the same was identified as that of Kuldeep Kaur.

The prosecution evidence is consistent that the body was exhumed from the courtyard of Sucha Singh. PW-10, Sukhvinder Singh, brother of deceased Kuldeep Kaur, PW-12, the Investigating Officer and other witnesses have said so. What is surprising is the fact that Sucha Singh himself has not said a word about the discovery of the body. In fact, in his deposition, he has not stated anything about what happened after he lodged the FIR, though it appears from the evidence of PW-10 that Sucha Singh, PW-6, had also signed the inquest report as well the memo prepared regarding taking possession of the dead body of Kuldeep Kaur. However, it is not necessary to dilate on this aspect of the matter.

It is obvious from the facts brought on record that according to the disclosure statements made by the accused the dead body was lying buried in the courtyard of Gurmit Singh, husband of Bakshish Kaur. On the other hand, the evidence is equally clear that the dead body was actually recovered from the courtyard of Sucha Singh, husband of Kuldeep Kaur. It cannot therefore be said that the dead body of Kuldeep Kaur was recovered pursuant to the disclosure statements made by the accused. There is also no scope for any confusion because the accused being members of the same family could make no mistake about the courtyard of one or the other. Moreover, Sucha Singh, PW-6, in his deposition has clearly stated that he had constructed his house with a boundary wall and his brothers also had separate houses with boundary walls. The courtyards of all the three brothers were therefore clearly demarcated and therefore the recovery cannot be explained by

conjecturing that though they mentioned the courtyard of Gurmit Singh actually they meant the courtyard of Sucha Singh. We may only notice at this stage that Buta Singh in the course of investigation had informed the Investigating Officer that Bakshish Kaur had invited Kuldip Kaur to her house and she has been killed there. Similarly, Resham Singh, PW-7, in the course of investigation claimed to have seen the murder being committed in the house of Gurmit Singh. We have referred to the statement made by these witnesses in the course of investigation only to recapitulate the background in which the disclosure statements were recorded. But as a matter of fact the body was found buried in the courtyard of Sucha Singh and not the courtyard of Gurmit Singh.

Under these circumstances, it is not possible to hold that the dead body of Kuldip Kaur was recovered pursuant to the alleged disclosure statements made by the appellants herein. The prosecution has therefore failed to establish the second incriminating circumstance as well.

In view of our finding that the evidence regarding confessions made by the appellants and recovery of dead body pursuant to the disclosure statements made by them is unbelievable and unacceptable, there is no other evidence on record on the basis on which the conviction of the appellants can be upheld. We, therefore, allow the appeal and set aside the impugned judgment and order of the High Court dated 13.02.2001 and acquit the appellants of the charges levelled against them. Appellant No.2 is on bail. Her bail bonds are discharged. Appellant No.1 shall be released forthwith unless required in connection with any other matter.