

Smt. Mukhtiar Kaur

Vs

State of Punjab

Criminal Appeal No. 155 of 1974

(Syed M. Fazal Ali, R. S. Sarkaria, D. A. Desai JJ)

05.02.1980

JUDGMENT

Fazal Ali, J. -

1. This appeal has been filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and is directed against the judgment of the High Court of Punjab and Haryana reversing the acquittal of the appellant and convicting her under Section 302/120-B. Indian Penal Code to imprisonment for life. The High Court had also convicted one Sarup Singh under Section 302 to imprisonment for life, but no appeal appeared to have been filed by Sarup Singh in this Court. We shall therefore confine our attention only so far as the case of the appellant, Mukhtiar Kaur is concerned. The facts leading to the death of the deceased Jaggar Singh has been detailed in the judgment of the High Court and trial Court and it is not necessary to repeat the same. It appears that PW 2, Hardayal Singh, approver and the accused Sarup Singh were close friends and were indulging for some time in the smuggling of opium. Sarup Singh bore serious animus against the deceased Jaggar Singh because he had given evidence in a murder case against the brother of Sarup Singh and on the basis of his (Jaggar) evidence the brother of Sarup Singh was convicted and sentenced to imprisonment for life. This appears to be the main motive for hatching the conspiracy to kill Jaggar Singh. According to the prosecution, Jaggar Singh was picked up from his house and taken first to the kotha of Hardayal Singh and thereafter to the kotha of Zora Singh, PW 13. The appellant is said to have accompanied Sarup Singh and Hardayal Singh, the approver. The central evidence in the case consists of the testimony of the approver who has given the essential details of the prosecution case and the manner in which Jaggar Singh was taken to the kotha of Zora Singh, PW 13 and then taken in a taxi brought by Zora Singh to a lonely place and thereafter decoyed to a jungle where he was shot. The trial Court disbelieved the entire testimony of the approver and held that the story given by the approver was a tissue of lies and was wholly improbable. The High Court however on reappraisal of the evidence of the approver disagreed with the trial Court and believed the approver as they held that it was corroborated against the two accused in material particulars.

2. In the instant case, we are only concerned with the role played by Smt. Mukhtiar Kaur in the conspiracy to murder the deceased. Apart from the evidence of the approver, we do not find any satisfactory evidence to corroborate his evidence regarding the participation of the appellant. In the first place, reliance was placed on the recovery of a golden ring belonging to the deceased from the trunk at the instance of the appellant Mukhtiar Kaur. This recovery does not appear to be of any importance because PW 8, Tej Kaur, the widow of Jaggar Singh has clearly admitted that her husband Jaggar Singh had illicit intimacy with the appellant and for that reason she was not treated well by her husband. In view of the friendly relations of the deceased with the appellant, the

possibility that the ring owned by the deceased may have been given to Mukhtiar Kaur cannot be excluded and that explains the possession of the ring with Mukhtiar Kaur which she got recovered from the trunk. Moreover PW 8 is not an independent witness because she was inimically disposed towards the appellant who was having illicit relations with her husband.

3. It was contended by Mr. Harbans Singh that PW 8 has deposed that even at the time when Jaggar Singh left the house, he was wearing the ring recovered from the house of the appellant. This however does not carry the matter any further because the possibility that the deceased may have passed on the ring to the appellant between the house of Tej Kaur and the kotha of Zora Singh cannot be excluded. The other circumstance relied upon by the prosecution to corroborate the evidence of the approver was the statement of PW 4, Hari Singh who proves a sort of an extra-judicial confession said to have been made before him by Mukhtiar Kaur.

4. We have gone through the evidence of PW 4 and we are not impressed with his evidence. It is not at all understandable as to why the appellant should suddenly decide to make a confession of all persons to Hari Singh. The witness admits in cross-examination that he did not know the neighbour of Mukhtiar Kaur nor had he ever been to the house of Mukhtiar Kaur. He further observed that never before Mukhtiar Kaur had come to him. In these circumstances we find it difficult to believe that the appellant will go suddenly to make a confession of all persons to this witness. Lastly reliance was placed on the evidence of PW 13, Zora Singh to prove that even at his kotha, the appellant was present along with Sarup Singh and the approver. It is true that the approver has stated that at the kotha of Zora Singh two gandas blows were given to Jaggar Singh by the approver himself. Reading the witness of PW 13, it appears that although he came to know that the deceased had been given serious injuries by Hardayal Singh yet he made no attempt to inform the police or to take the injured person to the hospital but was trying to save the approver and the other accused from the clutches of the police. He accordingly at the instance of the accused, got a taxi and instead of taking them to Jagraon where there was a hospital conveniently left them at a lonely place where the deceased was taken out from the car. PW 13, Zora Singh did not at all protest as to why the deceased was being taken out of the taxi to a lonely place instead of being taken to the hospital for treatment of the injuries received by Jaggar Singh. Thus by his deliberate silence he tried to assist the accused in executing their nefarious plan, particularly being a relation of the approver he was thus if not an accomplice, at least a sympathiser of Hardayal Singh. In these circumstances therefore we are not able to place any reliance on the testimony of PW 13, Zora Singh who does not appear to be a witness of truth. Apart from this there is absolutely no evidence to corroborate the evidence of the approver. Lastly the main motive for the appellant to have taken part in the conspiracy and the assault on the deceased is said to be the fact that the deceased had molested the daughter of the appellant. To prove this fact, a copy of complaint has been produced to show that on July 16, 1968 about two years before the occurrence, the Sub-Inspector of Police Station Dhanola had submitted a report before the Magistrate that Jaggar Singh under the influence of liquor created a row in front of the house of Sarwan Singh, the husband of the appellant and tried to "create trouble for his daughter Bibbo". There is however nothing to show if the proceedings were taken on the basis of this report nor has prosecution examined any witness to prove the truth of the incident and the facts mentioned in the complaint. On the other hand PW 8, Mst. Tej Kaur has clearly stated in her evidence that there was no dispute regarding the daughter of Mukhtiar Kaur with her husband in her presence. In these circumstances therefore even the motive alleged has not been adequately proved.

5. Having regard to the circumstances mentioned above and the reasons given by us, we are satisfied that the testimony of the approver has not been corroborated in material particulars insofar as the appellant is concerned. At any rate it cannot be said that if the trial Court acquitted the appellant, the

view taken by him was not reasonably possible. The appeal is accordingly allowed and the conviction and sentence passed on the appellant are set aside, and she is acquitted of the charges framed against her. The appellant shall now be discharged from her bail bonds.

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