

Abdul Sattar

Vs

Union Territory, Chandigarh

Criminal Appeal No. 489 of 1977

(Ranganath Misra, A. N. Sen JJ)

24.09.1985

JUDGMENT

RANGANATH MISRA, J. -

1. The appellant had been convicted under Section 302, IPC and was sentenced to death by the learned Additional Sessions Judge, Chandigarh. The death sentence has been commuted to one of imprisonment for life by the High Court. The appellant was also convicted for offences under Sections 364 and 201, IPC but no separate sentences have been awarded either by the trial Court or by the High Court. This appeal is by special leave.
2. The appellant was tried along with three others and all the them were charged under Sections 120-B, as also 366, 368 and 376 IPC. Prosecution alleged that the appellant was having illicit relationship with PW 14, widow of Sardar Ali, the deceased and he intended to do away with Sardar Ali so that he could take PW 14 to his own house. On October 15, 1975, the appellant came to the house of Sardar Ali where PW 14 was present and suggested to the deceased that he may accompany him to Chandigarh for light refreshment. Appellant and Sardar Ali left for Chandigarh in the afternoon by cycle indicating to PW 14 that Sardar Ali would return by 8 or 9 p.m. They reached the general bus stand at Chandigarh and left the cycle at the stand. From there appellant took Sardar Ali on his motorcycle to Joginder Singh's shop (PW 13) at Khumano. They reached there around 8 p.m. By then both of them had taken liquor and PW 13 entertained them with more liquor. At this stage the appellant is said to have called PW 13 from his shop and told him that Sardar Ali was now under the influence of liquor and the opportunity of killing him may not be lost. It is alleged that PW 13 dissuaded him from doing so whereupon the appellant pointed out that his brother Rakha (who had been tried as an accused) would make all arrangements and there was nothing to be afraid of. From there all the three went on motorcycle to Bhakra Canal side. Around 10 p.m. after they had got down from the motorcycle, the appellant took out a plastic string from the basket of the motorcycle and put the same around the neck of the deceased and made him lie on the ground and sat upon his chest. PW 13 is said to have held his legs while the appellant throttled him to death. The pant and the shirt worn by the deceased were removed and the dead body was pushed into the canal. The pant and shirt of the deceased were concealed in a burrow pit near about the locality where the deceased was murdered. The following day Rakha went to the house of the deceased and informed PW 14, the widow, that her husband was having stomach pain and had sent words for her to come. She accompanied Rakha but could not find her husband. Later on the entire conspiracy was discovered. PW 13 turned approver and on the basis of the approver's evidence corroborated by circumstantial evidence like recovery of the pant and the shirt worn by the deceased and extra-judicial confession, the prosecution case was accepted by the trial Court. The trial Court, however, categorically found that there was no criminal conspiracy as alleged. He also found that

the allegation of rape of PW 14 was totally false. On these findings he acquitted the co-accused.

3. Both the trial Court as also the High Court did not give full effect to the finding that there was no conspiracy. If there was no conspiracy, association of PW 13 with the process of murdering the deceased is difficult to believe. It is clear that the appellant had not intended to murder the deceased when they left their village for Chandigarh. PW 13 on his own showing had never agreed, until he was prepared to hold the legs of the deceased at the time he was murdered, to do away with the life of the deceased. Even if the appellant had intended to kill the deceased he would not have taken PW 13 along with him to evidence the act of killing.

4. PW 13 appears to have been brought before the Court in a handcuffed condition. There is enough material in his evidence to show that when he was examined police and jail officials were present. It is difficult to accept the prosecution case that the evidence given by the approver was totally voluntary. The evidence as to how PW 14 was taken from her house after the death of the husband is very much discrepant. While PW 14 has one story to tell, her mother has given a different account of how things happened. Similarly, we are not at all impressed in regard to the evidence of discovery of the pant and shirt of the deceased. According to the prosecution these two wearing apparel had been removed from the body of the deceased after he had been done to death and to avoid identification, as indicated by the appellant, the pant and the shirt had been removed from the body and hidden there. Recovery is said to have been made more than three weeks after the occurrence. Admittedly, the place from where these two things are said to have been recovered was a public place and appears to have been very much accessible to people of the locality. It is difficult to believe that these two had been so concealed that they were not noticed and were available to be collected from the very place such a long time after.

5. PW 13 was never asked to identify the pant and the shirt. It was done by the mother of the deceased. Mr. Kohli, learned counsel for the appellant argued that the mother was really not competent to identify in the absence of clear evidence that she was acquainted with the clothing and she had seen the dress that the deceased wore when he went in the company of the appellant on bicycle to Chandigarh. It is quite possible that the mother may have had no idea about his dress. PW 13 was more competent than the mother to identify the dress but he had not been required to do the job.

6. Mr. Girish Chandra, learned counsel for the respondent agreed that there were various discrepancies in the evidence but according to him there was a ring of truth in the fundamental aspects of the prosecution case and, therefore, we should not interfere with the judgment of conviction. On the other hand, we are impressed by the fact that there was no eyewitness to the occurrence and even the dead body of the deceased has not been traced. The prosecution has sought to prove its case by relying upon the evidence of the approver. The approver is a competent witness but the position in law is fairly well settled that on the uncorroborated testimony of the approver it would be risky to base the conviction, particularly in respect of a serious charge like murder. We have read the evidence of PW 13 carefully and it has not impressed us. Once we do not have the satisfaction that PW 13 is a reliable witness the worth of his evidence is lost and even by seeking corroboration such evidence cannot be the foundation of a conviction. Apart from that, evidence regarding extra-judicial confession is not really believable and once we reject the story of recovery of the wearing apparel, the link appears to have been irreparably lost.

7. The conviction of the appellant in these circumstances appears to have been totally unjustified. We allow the appeal, set aside the conviction and acquit the appellant of the charges for which he

was convicted. The appellant is on bail. He does not have to surrender and the bail bond will stand discharged.

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