

Balwinder Singh

Vs

State of Punjab

Criminal Appeal No. 192 of 1985

(Dr.A. S. Anand, S. C.Sen JJ)

09.11.1995

JUDGMENT

DR A.S. ANAND, J.

1. The appellant on conviction by the learned Judge, Special Court, Patiala for offences under Sections 302/201 IPC was sentenced to suffer imprisonment for life and to pay a fine a Rs 2000 and in default to suffer further RI for two years for the offence under Section 302 IPC and 2 years' RI for the offence under Section 201 IPC. Both the sentences were, however, directed to run concurrently. Through this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, he has questioned his conviction and sentence.

2. The prosecution case in brief is that the appellant and Smt Tejinder Kaur, PW 2 were married about 10 years prior to the date of occurrence which allegedly took place on 18-3-1984. Two daughters, Pinky and Rozy, aged about 6-1/2 or 7 years and 2-1/2 years respectively, were born out of this wedlock. Ajmer Kaur, mother of the appellant as well as the appellant were unhappy with Tejinder Kaur, PW 2 for giving birth to daughters only and both she and the appellant used to quarrel with Tejinder Kaur on that account, who was also given beating by the appellant on certain occasions. On 17-3-1984, there was one such quarrel. The appellant and his mother Ajmer Kaur conspired to put an end to the life of the two daughters and in pursuance thereof, on 18-3-1984, the appellant took away both the daughters stating to PW 2 that he would return only after killing them. He reached bus-stand Patiala where he met Balwant Kaur, PW 4 and on her enquiry about the welfare of the children told her that he was taking away his daughters to kill them. Balwant Kaur PW 4 on hearing this went to the house of the appellant and informed Tejinder Kaur PW 2 about it. The appellant took the children to Ludhiana to the house of his sister Mohinder Kaur, DW 1 and after staying there for a few hours, left the house saying that he was going to Rara Saheb. On 19-3-1984, Dr Jaswant Singh PW 6 found the dead body of a female child in the canal at about 12 or 12.30 p.m. when he went there to ease himself. The dead body was taken out but no one who reached there from the adjoining villages could identify it. At about 4.30 or 5.00 p.m., the appellant also reached there and identified the dead body as of his own child. He took the dead body of Rozy and cremated her near Gurdwara Rara Saheb. The other daughter Pinky, however, was not found either dead or alive. Satya Walia, PW 3 a social worker and a neighbour of the appellant and Tejinder Kaur, PW 2 on coming to know about the murders from the neighbours and from an extrajudicial confession made by the appellant to her that he had murdered the girls and cremated the dead body of Rozy made a written complaint, Ex. PB, to the police on 23-3-1984 and on its basis the first information report was registered. The investigation of the case was taken in hand by ASI Iqbal Singh, PW 9 who visited the village as well as the site of cremation. During the investigation, the police took into possession some bones and steel bangles from the place where the

dead body of Rozy was cremated on the basis of a disclosure statement made by the appellant. After completion of the investigation, challan was filed against both the appellant and his mother Smt Ajmer Kaur. Both of them were charged for an offence under Section 120-B IPC, for conspiring to commit the murder of Rozy and Pinky. As already noticed, the appellant was also charged with the offences under Sections 302/201 IPC for committing the murder of Rozy and cremating her dead body to screen himself. He was also charged for an offence under Section 302 IPC for the murder of Pinky. The trial court after recording the evidence, found that the charge of conspiracy under Section 120-B IPC was not established and consequently both the appellant and Ajmer Kaur were acquitted of the said charge. The trial court also found that the charge against the appellant for an offence under Section 302 IPC for committing the murder of Pinky had also not been established and therefore acquitted the appellant of the said charge while convicting and sentencing him for the offences under Sections 302/201 IPC for the murder of Rozy. The appellant, in his statement under Section 313 CrPC had denied the prosecution allegations and stated that his wife was under the influence of Satya Walia, PW 3 who was leading her astray and since the parents of his wife, Tejinder Kaur, PW 2 were greedy, she used to earn money and hand over the same to her parents. He had admonished his wife for going astray and keeping company with Satya Walia PW 3 on a number of occasions. PW 2 had gone to her parent's house at Sunam leaving the children behind. While he had gone to the market, the children left the house on their own and when he and his mother Ajmer Kaur after search did not find them, they sent a telegram to Tejinder Kaur, PW 2 and Sham Singh, on 22-3-1984. That with the connivance of Satya Walia, PW 3 he was falsely implicated in the case.

3. There is no direct evidence in this case insofar as the murder of Rozy is concerned. The prosecution relied upon the following circumstances to connect the appellant with the crime in the trial court :

(i) The evidence of "last seen together" based on the evidence of PW 2, Tejinder Kaur, Balwant Kaur, PW 4 and a Mohinder Singh, PW 5; (ii) extrajudicial confession made by the appellant to PW 3 Satya Walia; (iii) the recovery of the dead body of Rozy from the canal and its claim by the appellant and (iv) disclosure statement made by the appellant leading to the recovery of bones of a child from the place where the appellant had cremated the dead body of Rozy.

4. In a case based on circumstantial evidence, it is now well-settled that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof. It is in the context of the above-settled principles, that we shall analyse the evidence led by the prosecution.

(i) Last seen together

5. PW 2 Tejinder Kaur, wife of the appellant deposed about the quarrels between her on the one side and the appellant and his mother on the other side on account of the birth of the daughters only and went on the state that on 18-3-1984 the appellant and his mother conspired to do away with her two

daughters, Rozy and Pinky, because they considered the birth of the females to be a curse. She deposed that the appellant took away both the daughters at about 12.30 p.m. or 1.00 p.m. on that day, stating that he would return only after killing them. Soon thereafter, Balwant Kaur PW 4, went to the house of PW 2 at about 2.00 p.m. and told her that the appellant had met her at the bus-stand and disclosed to her, on her enquiry about the well-being of the children, that he was going to kill the daughters. On 19-3-1984 her mother-in-law, Ajmer Kaur informed her at about 6.30 a.m. that her daughters had been killed by the appellant and thrown in the canal. On getting this information, PW 2 proceeded towards her parents' house at Sunam but she was brought back by her mother-in-law Ajmer Kaur from near Modi College on a rickshaw. Both of them then went out in 'search' of the children. The appellant returned to the house on 20-3-1984 and on her enquiry from him about the children, he disclosed to her that he had killed both the daughters and had cremated Rozy behind the Gurdwara Rara Saheb and that the dead body of Pinky had not been found. On hearing this news, she started crying. Satya Walia, PW 3 on hearing about the murders came to her house and asked the appellant about the children who disclosed to her that he had killed them. During her cross-examination, PW 2 admitted that she had never earlier complained about the quarrels or the beatings given to her by the appellant and his mother to anyone except to Satya Walia, PW 3 but conceded that she did not disclose to Satya Walia, PW 3 either that the cause of the quarrels was on account of the birth of daughters. In her statement recorded under Section 161 CrPC also the cause of quarrel had not been stated by her and she was duly confronted with it. PW 2 also admitted that neither on 18-3-1984 nor on 19-3-1984 did she inform anyone about the incident and even though Satya Walia had met her on 19th March, she did not tell her about it and that it was only on 20-3-1984 that she had disclosed to Satya Walia, PW 3 for the first time as to what had transpired on 18-3-1984 and the information she had received from her mother-in-law on the morning of 19-3-1984. She did not report the matter to the police nor even informed her parents about the murder of the children till 23-3-1984. Her statement was recorded by the police only on 24-3-1984. She admitted that she had visited Gurdwara Rara Saheb along with her mother-in-law on 20-3-1984 and had found ashes and bones there.

6. The prosecution sought corroboration of the evidence relating to the taking away of the two daughters by the appellant as deposed to by Tejinder Kaur, PW 2 from the statements of Balwant Kaur, PW 4 and Mohinder Singh, PW 5. The trial court did not place any reliance upon the statement of Balwant Kaur, PW 4 and in our opinion, rightly : Her statement does not inspire any confidence. Though PW 2 in her statement deposed that PW 4 was her mother's sister and had come to her straight from the bus-stand on hearing from the appellant that he was going to kill the daughters, PW 4 Balwant Kaur in her cross-examination stated

"Tejinder Kaur is not related to me as such. My purpose of visit was to see Tejinder Kaur as directed by her mother."

The prosecution, however, did not examine the mother of Tejinder Kaur to elicit "what direction" she had given to PW 4 and why. This material contradiction between her testimony and the statement of PW 2 Tejinder Kaur, besides the improbability of the appellant making any statement to her, renders her evidence untrustworthy.

7. So far as the evidence of PW 5 Mohinder Singh, the father-in-law of the sister of the appellant is concerned, the trial court found it to afford corroboration to the statement of PW 2. Accordingly to him, the appellant had visited his house on 18-3-1984 at about 4.00 or 4.30 p.m. along with his daughters Pinky and Rozy and after taking tea had left the house information him that he was going to visit Rara Saheb. During his cross-examination, PW 5 denied the suggestion that after marriage,

his son Amrik Singh was residing separately from him and that he was not having good relations with his daughter-in-law, sister of the appellant.

8. This is the entire evidence relied upon by the prosecution in support of the first circumstance.

9. There was a delay of 5 days in lodging the first information report Ex. PB. On her own admission, PW 2 Tejinder Kaur was told by the appellant while taking away the girls on 18-3-1984 at about noontime that he was going to kill them. She, however, kept quiet. She did not protest let alone raise any hue and cry so as to prevent the appellant from taking away the daughters for killing them. She did not even disclose to anyone as to what the appellant had told her even though the appellant did not return home at night. On 19th March, she learnt at about 6.30 a.m. from her mother-in-law Ajmer Kaur, a co-conspirator with her husband, that the appellant had killed the two daughters and thrown them in the canal. She still kept quiet and not only did she not raise any hue or cry, she did not inform anyone including her parents and Satya Walia, PW 3, who had admittedly met her on that day about the incident. This conduct is rather unnatural for a mother, keeping in view the earlier quarrels and the declarations made by the appellant of his intention to kill the daughters on 18-3-1984 itself. PW 2 also admitted in her cross-examination that she along with her mother-in-law Ajmer Kaur had gone out in search of the children to various places including Ragho Majra, where the maternal uncles of the appellant were residing. Why would Ajmer Kaur go with her, to search for the children, when she already knew that the appellant had killed them and thrown the dead bodies in the canal is not at all understandable. From the statement of PW 3 as contained in the FIR it emerges that when she came out of the house of the appellant, she had met PW 2 and Ajmer Kaur coming in a rickshaw and that both of them were weeping at that time. This conduct of Ajmer Kaur does not fit in with the prosecution case. PW 2 also admitted that she along with her mother-in-law had visited Gurdwara Rara Saheb on 20-3-1984 itself and had seen the mortal remains of her child and that the appellant had also told her on returning home on 20-3-1984 that he had killed the girls, but still she did not lodge any complaint with the police or inform anyone about it. PW 2 could give no explanation for her silence. The evidence of PW 5, Mohinder Singh, the father-in-law of the sister of the appellant does not inspire confidence. DW 1, Mohinder Kaur, wife of Amrik Singh, daughter-in-law of PW 5 asserted in her statement that the appellant had never visited her house in March 1984 alone with his children and that when she came to know on 23-3-1984 that the children of her brother were missing from their house, she had visited his house. She Stated that her father-in-law was residing separately from her and that she and her husband had separated from him within six months of their marriage. She and her husband were not even on visiting terms with her father-in-law. These assertions of PW 1 have remained unchallenged. There was, thus, no occasion for the appellant to go to the house of the father-in-law of his sister, with whom admittedly his sister was having strained relations and not visiting his sister at all on that day. In the face of the statement of DW 1, the correctness of the statement of PW 5 becomes doubtful. PW 5 appears to have come forward to depose against the appellant, who is the only brother of his daughter-in-law DW 1 Mohinder Kaur, possibly because of his strained relations with her. It appears to us that the delay in lodging the first information report was utilised by the complainant party in giving twist to the facts and introducing interested witnesses like PW 4 and PW 5 in the case. We are not impressed by their statements and find that the same an afford no corroboration to the otherwise untrustworthy testimony of Tejinder Kaur, PW 2. The trial court erred in relying upon the statements of PW 2 and PW 5, ignoring the basic infirmities in their evidence and overlooking the delay in the lodging of the FIR. The prosecution has failed to establish that the appellant had taken away his two daughters on 18-3-1984 in the manner alleged by it. In our opinion the evidence led by the prosecution to establish the circumstance of "last seen together" has not been established beyond a reasonable doubt.

(ii) Extrajudicial confession

10. An extrajudicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extrajudicial confession.

11. The trial court relied upon the extrajudicial confession allegedly made by the appellant to PW 3 Satya Walia to the effect that he had killed his daughters and had cremated the dead body of Rozy, to connect the appellant with the crime. If found corroboration of the statement of PW 3 from the evidence relating to the recovery of the dead body from the canal and the disclosure statement allegedly made by the appellant leading to the recovery of the bones from the place behind Gurdwara Rara Saheb, besides the statement of PW 2.

12. PW 3 claims to be the Pradhan of Mohalla Preet Nagar and states that she is a social worker. According to her deposition, the appellant had made an extrajudicial confession to her when she visited his house on 20-3-1984 on learning from the neighbours that the appellant had killed his two daughters. PW 3, however, lodged the complaint with the police only on 23-3-1984 when not only had she learnt from the neighbours about the murder of the two girls by the appellant but the appellant had himself made an extrajudicial confession to her on 20-3-1984 itself. PW 3 admitted in her cross-examination that she was with the police in connection with the case of Darshana from 21-3-1984 to 23-3-1984 but could offer no explanation as to why she did not lodge the complaint with the police till 23-3-1984. This delay also probabalises the defence version that after 22-3-1984, when PW 2 and Sham Singh and others arrived from Sunam on getting the telegraphic information about the missing children, they falsely implicated the appellant with the help of PW 3.

13. Again, according to PW 3, when she met PW 2 and her mother-in-law on coming out of the house of the appellant after he had made an extrajudicial confession to her, Tejinder Kaur, PW 2 started crying on seeing her while her mother-in-law Ajmer Kaur kept silent. This is an apparent improvement made by her at the trial since in her statement in the FIR Ex. PB, with which she was duly confronted, she had stated that both Tejinder Kaur and Ajmer Kaur were weeping and crying. When asked to explain this improvement at the trial, PW 3 stated that she had "nothing to say". In view of the hostility which the appellant had with PW 3, for leading his wife astray, we find it rather difficult to accept that the appellant could have made any extrajudicial confession to her. The manner in which the extrajudicial confession is alleged to have been made and the silence of PW 3 for three days in disclosing the same to the police, even though she had admittedly been with the police between 21-3-1984 and 23-3-1984 renders it unsafe to rely upon her statement. This unexplained long delay in lodging the first information report Ex. PB detracts materially from the reliability of the prosecution case in general and the testimony of PW 3 in particular. We find that the alleged extrajudicial confession is surrounded by suspicious circumstances and the prosecution has not been able to establish that the appellant had made any extrajudicial confession to PW 3 Satya Walia and therefore, this circumstance remains unestablished.

(iii) Recovery of a dead body and its claim by the appellant as that of Rozy

14. Though with the ruling out of the circumstances relating to the "last seen together" and "the making of extrajudicial confession", as not having been established, the chain of circumstantial evidence snaps so badly that it is not necessary to consider any other circumstances, but we find that

even the third circumstance relating to the recovery of the dead body and it being claimed by the appellant and its subsequent cremation by him has remained unestablished.

15. The two witnesses relied upon by the prosecution in support of the third circumstance are PW 6, Dr Jaswant Singh and PW 7, Naib Singh. According to PW 6, on 19-3-1984 when he had gone near the canal to ease himself, he noticed the dead body of a female child in the canal. Tej Singh Panch, Santokh Singh and Naib Singh also arrived at the spot and the dead body was taken out of the canal. None out of these who had, by that time assembled at the spot, could identify the child whose dead body was recovered. The chowkidar of the village was sent to the adjoining villages for ascertaining the identify of the child. However, no one was able to identify the child. The appellant went to the spot at about 5.00 p.m. and stated that "his children had fallen in the canal and he was in search of them". He identified the dead body as that of his daughter Rozy. He was given custody of the dead body. He wanted to take the child to Patiala but stated that he was a poor person and had no money. Persons who were present there contributed some money and gave it to him to take the dead body of Patiala. That later on he came to know from some "other persons" that the appellant had cremated the dead body near the drain. Naib Singh, PW 7 who has a shop situated on the canal bank of Rara Saheb spoke on the same lines as PW 6. He deposed that at about 12.00 noon or 12.30 p.m. he came to know about the presence of the dead body of a child. The dead body was recovered from the canal. No one was able to identify the dead body till the appellant arrived there at about 5.00 p.m. and identified the body to be that of his child. The child was handed over to the appellant, who was also given some money on his stating that he was a poor person and did not have any money to take the dead body to Patiala.

16. Admittedly, neither PW 6 nor PW 7 knew the appellant from before. No identification parade was held to identify the appellant as the person who had approached PW 6 and PW 7 and had claimed the dead body to be that of his daughter. It was incumbent upon the prosecution to have held an identification parade for proper identification of the appellant by these two witnesses. Not only did it fail to hold an identification parade but the prosecution also failed to give any explanation for not holding such a parade. The identification of the appellant by PW 6 and PW 7, as the person who had claimed the dead body, in court, about 9 months later, in the absent of any earlier identification, loses much of its importance and is in any event not sufficient to hold that the appellant had claimed the dead body to be that of his child. Thus, considered in the light of the above discussion, we find that the prosecution has not been able to establish the circumstance relating to the recovery of the dead body or it being claimed by the appellant to be that of his child. It cannot be said with any amount of certainty that the dead body found by PW 6 and PW 7 was that of Rozy or that the appellant had claimed the dead body to be that of his child. The evidence is of a doubtful nature and has to be ruled out of consideration to connect the appellant with the crime.

(iv) Disclosure statement

17. The last circumstance relied upon by the prosecution is the disclosure statement of the appellant, leading to the recovery of the bones of the deceased. The trial court ruled out of consideration the disclosure statement and the consequent recovery of the bones and placed no reliance on it. The trial court opined

"At the outset it may be stated that in this case no importance can be attached to the disclosure statement made by Balwinder Singh accused and in consequence thereof recovery of the bones. Tejinder Kaur PW had already visited the place of cremation much before the case was registered. Be that as it may, there is no reason to doubt

that the bones were taken into possession from the alleged place of cremation which is admittedly an open place."

We agree with the trial court

18. That apart, the prosecution evidence is not specific as to whether even the bones which were recovered from the place of cremation behind Gurdwara Rara Saheb were those of Rozy. According to PW 6 and PW 7, the age of the dead body of the child which was recovered from the canal was about 4 or 4-1/2 years. According to the evidence of Dr Surinder Behal, PW 1, the bones which were sent to him for examination were of a child aged between 3 to 5 years and the identify of the sex of the child could not be established from those bones. From the prosecution evidence including the statement of PW 2, the age of Rozy was about 2 or 2-1/2 years. It cannot therefore, be said that the recovered bones have been connected positively to be those of Rozy. Moreover, according to PW 6 and PW 7, the child whose body was recovered from the canal had red/pink rubber bangles on its writ but according to PW 2 when Rozy left home in the company of the appellant, she was wearing steel bangles. The bangles which were recovered from the place of cremation along with the bones were also found to be steel bangles. Thus, it cannot be said with any amount of certainty that the bones which were taken into possession pursuant to the disclosure statement allegedly made by the appellant were that of Rozy at all. In this connection, it also deserves to be noticed that Sham Singh and Satpal before whom the disclosure statement, Ex. PB, was alleged to have been made by the appellant, as per the evidence of ASI Iqbal Singh PW were not examined at the trial. Even the witnesses to the recovery of the bones were withheld and not produced at the trial. These infirmities, create a doubt about the correctness of the prosecution case regarding the making of any disclosure statement by the appellant. This circumstance also, therefore, has not been established by the prosecution.

19. From the above discussion, it emerges that none of the four circumstances relied upon by the prosecution to connect the appellant with the crime have been established by the prosecution. On an independent appraisal of the evidence on the record, we have unhesitatingly come to the conclusion that the trial court was justified in convicting and sentencing the appellant for the offence under Sections 302/201 IPC. The finding of guilt recorded against the appellant by the trial court is not sustainable in law. From the very opening sentence of the judgment of the trial court which reads

"Birth of a female child is still considered a curse in the Indian society. The present case is the worst type of example where father is alleged to have caused the murder of his two daughters who were aged between 5 to 7 years."

It appears to us that the trial court got swayed by emotional considerations and allowed suspicion, surmises and conjectures to take the place of legal proof.

20. This appeal is consequently allowed and the conviction and sentence of the appellant is hereby set aside. The appellant is on bail by virtue of an order of this Court dated 25-4-1989. His bail bonds shall stand discharged.