

(Supreme Court Of India)

Jaswant Gir

v.

State of Punjab

(P. Venkatarama Reddi and P.P. Naolekar, JJ.,)

Criminal Appeal No. 693 Of 2004 | 05-04-2005

1. The second accused in Sessions Case No. 1 of 1998 on the file of the Additional Sessions Judge, Patiala, is the appellant herein. He was charged under S.302 read with S.34 IPC along with the other two accused for the murder of one Dharam Pal, who was a cashier in Union Bank of India, Gumthala Gharu Branch (Kurukshetra) on the night of 10-11-1997. The other two accused were acquitted by the trial court holding that there was no satisfactory evidence of their involvement in the murder. However, the appellant was convicted and sentenced to life imprisonment. The said conviction and sentence has been confirmed by the High Court by the impugned judgment.

2. It is the case of the prosecution that Gural Singh, a constable of Punjab Home Guards attached to Police Station Julkan, was on duty along with another constable at the liquor shop at Markanda. At about 7.30 p.m. Dharam Pal (deceased) approached the said constables for arranging lift in a vehicle to go to Pehowa. A little later, a Maruti van bearing No. CHK 8479, came from Pehowa side and stopped at the liquor shop. The occupants of that van, namely, the appellant and two other accused purchased liquor from the shop. At the request of Dharam Pal, the accused agreed to give him lift up to Devigarh. The deceased Dharam Pal boarded the vehicle along with the accused persons. On the morning of the following day i.e. 11-11-1997, Jarnail Singh (PW 11) noticed a dead body at a culvert of the canal while he was on his way to the fields in the village of Mihaun which is said to be quite close to Devigarh. He found that the throat of the deceased was tied up with a parna (scarf). PW 11 reported the matter to the police and his statement was recorded by PW 15 Sub Inspector of Police Station Julkan. An FIR was registered at 12.30 p.m. PW 15 having found the dead body at the site with a "parna" tied around the neck, took up the investigation and held the inquest and the dead body was sent to the hospital at Patiala for postmortem. PW 1, the medical officer conducted the autopsy on 11-11-1997 at 4.00 p.m. He noted that there was a ligature mark

which was horizontal and was about 5 cm wide, on the thyroid cartilage. The tongue was outside the mouth and there were signs of blood coming out of the mouth. There was also a lacerated injury on the right eyebrow and an abrasion on the right upper arm which was indicative of a struggle before strangulation. PW 1, the doctor was of the opinion that the death occurred on account of asphyxia as a result of strangulation. He found no traces of alcohol in the stomach of the deceased. Photographs of the dead body were taken at the hospital. It was on the basis of those photographs that PW 11, the constable is said to have identified the deceased as the person who approached him on the night of 10-11-1997 for arranging a ride to Pehowa. On 16-11-1997, PW 5, the brother of the deceased saw the photograph of the deceased in a newspaper and contacted Police Station Julkan and identified the deceased as his brother Dharam Pal. It is the further case of the prosecution that on 20-11-1997, the Sub Inspector (PW 11) along with ASI and other police personnel including PW 13, set up a picket at Village Binjal. At about 6.00 p.m. Van No. CHK 8479 which was passing through the picket was checked and the IO arrested the three occupants including the appellant, after he was identified by PW 13. The vehicle was seized. In the vehicle there were some documents pertaining to its registration and transfer. On 22-11-1997, a black bag, which is said to be the bag that was being carried by the deceased, was discovered on being pointed out by the accused Sukhwinder Singh. It contained his identity card, driving licence, bus pass, etc.

3. The incriminating evidence against the appellant consists of the alleged confession made by him to PW 9 and the circumstances relied upon by the prosecution. These circumstances are noted by the High Court at p. 10 of the judgment which are as follows:

"(a) Circumstances that the deceased met Gurpal Singh (PW 14) at the Markanda liquor vend on 10-11-1997 at 7.30 p.m. and from there took a lift in Van No. CHK 8479 which was carrying Jaswant Gir, Sukhwinder Singh and Roshan Puri.

(b) Circumstances that the dead body of the deceased was found near a culvert of canal minor by Jarnail Singh (PW 11) on the morning of 11-11-1997 at 7 a.m.

(c) Circumstances that Dr. Deepak Walia returned findings after post-mortem examination of the dead body that the deceased had been strangled to death.

(d) Circumstances that Van No. CHK 8479 was owned by Jaswant Gir.

(e) Circumstances that Jaswant Gir and the two acquitted accused were apprehended by the police on November 22 while travelling in Van No. CHK 8479.

(f) Circumstances that the bag of the deceased containing papers like identity card, bus pass, loan documents, etc. were recovered from the possession of the acquitted accused on the basis of his disclosure statement."

4. The High Court was of the view that the above circumstances coupled with the confession of the appellant made before PW 9, would establish the guilt of the appellant beyond reasonable doubt. It may be stated that the bag of the deceased was discovered on the basis of the disclosure made by the accused Sukhwinder Singh under S.27 of the Evidence Act. The said accused as well as the third accused were acquitted mainly on the ground that the alleged confessional statement did not implicate those two persons.

5. Apart from the extra judicial confession which we shall advert to a little later, the main incriminating fact relied upon is that the deceased was last seen by PW 14 in the company of the appellant and the other accused and that he was given a lift in the vehicle belonging to the appellant. In order to establish that the vehicle belonged to or was in de facto possession of the appellant, some evidence has been let in. The "last seen" evidence is sought to be established by the testimony of PW 14. At the outset, we must observe that there is a serious doubt cast on the version of PW 14 about the deceased going in the vehicle of the appellant. The destination of the deceased was Pehowa whereas the vehicle had come from Pehowa and was proceeding towards Devigarh which is in a different direction. Prima facie there is no apparent reason why the deceased

would have chosen to go in the vehicle which was proceeding to some other destination. The High Court resorted to a guess that the deceased would have been lured to consume liquor or his relatives might be there at Devigarh. Without probing further into the correctness of the "last seen" version emanating from PW 14's evidence, even assuming that the deceased did accompany the accused in their vehicle, this circumstance by itself does not lead to the irresistible conclusion that the appellant and his companion had killed him and thrown the dead body in the culvert. It cannot be presumed that the appellant and his companions were responsible for the murder, though grave suspicion arises against the accused. There is considerable time gap between the deceased boarding the vehicle of the appellant and the time when PW 11 found the dead body. In the absence of any other links in the chain of circumstantial evidence it is not possible to convict the appellant solely on the basis of the "last seen" evidence, even if the version of PW 14 in this regard is believed. In view of this, the evidence of PW 9 as regards the alleged confession made to him by the appellant assumes importance.

6. We must, therefore, test the veracity of the version of PW 9 in regard to the alleged confession made by the appellant. The following is the relevant portion of the deposition of PW 9 narrating the alleged confession made by the appellant:

"I know Jaswant Gir to some extent. About 1 - 1/4 to 1 - 1/2 years back he came to me in the evening in my room of the house. He told that he was having a vehicle. One person in drunken condition sat in his vehicle from Markanda. He was having a bag with him. He took his vehicle towards Devigarh. On the way he got suspicion that the bag of that person was containing money. He put the parna (loose cloth) around the neck of the person and killed him. He further stated that Sukhwinder Singh and Jaspal Singh were also with him in the vehicle."

7. The first and foremost aspect which needs to be taken note of is that PW 9 is not a person who had intimate relations or friendship with the appellant. PW 9 says that he knew the appellant "to some extent" meaning thereby that he had only acquaintance with him. In cross examination, he stated that he did not visit his house earlier and that he met the appellant once or twice at the bus stand. There is no earthly reason why he should go to PW 9 and confide to him as to

what he had done. According to PW 9, the appellant wanted to surrender himself to the police. But there is no explanation from PW 9 as to why he did not take him to the police station. He merely stated that the appellant did not turn up thereafter. The circumstances in which PW 9 went to the police station and got his statement recorded by the police on 14-11-1997 are also not forthcoming. In this context the statement of PW 9 towards the close of the cross examination assumes some importance. He stated that he had some cases pending in the courts and that he was seeking the help of the police in connection with those cases and he was often going to Police Station Julkan. Thus, he could be a convenient witness for the prosecution. That apart, the alleged confession made by the appellant, as narrated by PW 9, is not in conformity with the prosecution case. According to the prosecution, all the three accused were involved and PW 9 stated so before the police and as per the statement made by PW 9 to the police, all the three accused made the confession before him but he gave a different version in the court and that is why he was treated as hostile witness and leading questions were put to him by the prosecution. Thus, the credibility of this witness is in doubt. One more point to be noted is that the alleged statement of the appellant that the deceased was in a drunken condition cannot be correct as the doctor found no evidence of consumption of alcohol by the deceased.

8. Having regard to these features, we do not find assurance from all angles that the alleged confession attributed to the appellant by PW 9 is correct. It is not safe to base the conviction on the doubtful testimony of PW 9 who gave different versions before the police and the Court. The High Court omitted to critically evaluate the evidence of PW 9 and failed to take into account the doubtful features of his evidence.

9. We are, therefore, of the view that the benefit of doubt should go to the appellant and he is got to be exonerated of the charge. The conviction and sentence of the appellant is set aside and he shall be released forthwith from the jail.

10. The appeal is allowed accordingly.