

SUPREME COURT OF INDIA

Darshan Singh

Vs.

State of Punjab

CrI.A.No.1688 of 2009

(L.Nageswara Rao and Hemant Gupta,JJ.,)

06.12.2019

JUDGMENT

Hemant Gupta,J.,

1. The judgment and order dated 19th February, 2009 passed by the Division Bench of the High Court of Punjab & Haryana in an appeal filed by the three appellants is subject matter of challenge in the present appeals. It is admitted at Bar that the appellant Swaran Kaur died during pendency of the present appeals after she was released on bail by this Court on 4th October 2010.

2. An FIR was lodged by Jarnail Singh (PW-7) on 28th March, 2005 at 12:35 pm. He was the member of Nagar Palika, Morinda and had taken 7 Bigha of land on lease from Pritpal Singh, Mohan Singh sons of Khushal Singh on which he had sown wheat crop. He had also taken 7 Bigha of land on lease from Faqir Chand where again he had sown wheat crop. He stated that the wheat in the land of Faqir Chand is of small size but the wheat in the land of Pritpal Singh was 2% feet in height. He further stated that at about 10:30 am in the morning on that day, he along with Mohinder Singh Lamberdar (Village Headman) and Hari Pal had gone to his field but noticed a foul smell emanating from the land of Pritpal Singh near dump of wheat husk. He noticed a jute bag with maggots around it and suspected it to be a dead body of a man or a woman. The land was near the bye-pass that was frequented by people, however, it was lying closed because of rains. He left Hari Pal and Mohinder Singh Lamberdar at the spot and went to report the matter to the Police. Such statement was recorded by Balwant Singh, SHO who later appeared as PW-15. The investigations were initiated, dog squad and finger print experts were called at the spot. Case was registered against unknown persons. Copy of FIR was sent to the concerned Magistrate.

3. On examination of the body in the inquest proceedings (Ex.PL), one telephone diary, a plastic bag, a jute bag and ladies wearing cloth were found. The body was found to be decomposed and could not be identified. A Dupatta was found around the neck. The postmortem was conducted on 30th March, 2005. The dead body was identified by Ujjagar

Singh and Kuldeep Singh (PW-13).

4. Dr. Harbhajan Singh (PW-6) along with Dr. Navtejpal Singh and Dr. Gulshan conducted the postmortem and gave their report (Ex.PG). The Dupatta was found wrapped around the neck with two turns. No ligature mark was found present but skin over the Hyoid bone taken for Histopathological examination. The underlying Hyoid bone was found fractured. The probable time of death was 10 days between death and postmortem examination. The chemical examination report (Ex.PH) stated that Aluminum Phosphide Insecticide was detected in the samples containing parts of small and large intestine of the deceased. Phosphine, a constituent of Aluminum Phosphide, was detected in decomposed pieces of liver, spleen and kidney. Dr. Harbhajan Singh on the request of the police opined that the cause of death is poisoning due to Aluminum Phosphide Insecticide, haemorrhage and haemo-thorax due to injury in the left chest as described in the postmortem report.

5. After completion of the investigations including recording of the statement of the witnesses under Section 161 of the *Code of Criminal Procedure, 1973*¹, accused Avtar Singh, Jagmohan Singh, Swaran Kaur and Darshan Singh were made to stand trial. The deceased, Surjit Kaur, was mother of accused Avtar Singh. Swaran Kaur is wife and Jagmohan Singh is son of Avtar Singh. The accused Darshan Singh was a servant at Avtar Singh's house.

6. The prosecution story is that Surjit Kaur (deceased) had inherited 5 Bigha of land of Gurmit Singh (other son of deceased) who died issueless and accused Avtar Singh, Jagmohan Singh and Swaran Kaur were not happy with this inheritance. Out of this land, she sold 1 bigha and gave the remaining 4 bighas on theka (lease) to accused Avtar Singh at the rate of Rs.4,000/- per bigha. However, Avtar Singh had not been paying the lease amount to her. Panchayats had also been convened over this dispute, where the four accused threatened the deceased.

7. The learned Sessions Judge vide judgment and order dated 23rd May, 2007/26th May, 2007 acquitted Avtar Singh but convicted Jagmohan Singh, Swaran Kaur and Darshan Singh.

8. The prosecution relied upon PW-7 Jarnail Singh, on whose statement the prosecution process was initiated. He deposed that the investigating officer had recovered one small diary from the inner pocket of undershirt of the deceased which had some telephone numbers and was taken in possession vide memo Ex.PM. PW-8 Jagtar Singh, a milk man, deposed that he kept some acid with him for checking the fat of milk. He further stated that accused Swaran Kaur had come to him to get some acid to clean the rust on a cooking vessel and a toilet seat. She took % a bottle of acid from him. PW-10, Sohan Singh Patwari, had produced the record of the land of Gurmit Singh inherited by the deceased. He produced mutation Ex-PR and Jamabandi Ex.PS. PW-11 is Harpal Singh, the Sarpanch of Village Sahauran. He deposed that the deceased came to him on 15th March, 2005 with a grievance that Avtar Singh had not been paying lease money to her and he should facilitate the payment. He requested Avtar Singh and Swaran Kaur to give the lease money

to Surjit Kaur and they promised to give the lease money of Rs.2000/- by 20th March, 2005. He later got to know that Surjit Kaur had died.

9. The material witness is Kuldeep Singh (PW-13), son-in-law of the deceased, married to Gurnam Kaur, daughter of Amar Singh about 36 years back. He stated that his mother-in-law Surjit Kaur has been residing in a room (Chaubara). Out of 5 bighas of land, she had sold 1 Bigha of land for Rs.1,02,000/-. Out of sale consideration, Rs.95,000/- was deposited by her in the Post Office. The remaining 4 Bigha of land was given on lease to Avtar Singh at the rate of Rs.4,000/- per Bigha. Since, Avtar Singh was not paying lease money, there were differences between mother and son. He deposed that in the month of March, 2005, Swaran Kaur, daughter-in-law of the deceased informed him that Surjit Kaur had left after taking Rs.1,000/- from them towards lease money. It was on 29th March, 2005, he received a telephone call and also read in the newspaper that a dead body was found. He identified the dead body of his mother-in-law which was kept in the mortuary. He alleged that she has been murdered by Avtar Singh, his wife Swaran Kaur, his son Jagmohan Singh and one Darshan Singh.

10. Sukhdev Singh (PW-14) has been examined as a person of last seen. He deposed that on 22nd March, 2005 at about 5:30 am, one man and one woman came on TVS Motor Cycle and they were carrying a gunny bag. He did not identify the accused in Court. He read in the newspaper on 28th March, 2005 that a dead body was lying on by-pass road.

11. The investigating officer Balwant Singh was examined as PW-15. He deposed that on 29th March, 2005, Kuldeep Singh (PW-13) and Ujjagar Singh, son-in-laws of the deceased identified the dead body from clothes as the face was disfigured by pouring acid. Kuldeep Singh and Ujjagar Singh had named the accused as suspects. Thereafter, the Investigating Officer conducted the raids for arresting the accused. He stated that the accused could not be traced in village Sahauran and other places. Thereafter, on 30th March, 2005, Bhupinder Singh (PW-16) brought the accused Darshan Singh, Jagmohan Singh and Swaran Kaur and got their statements recorded. He arrested the accused. Further, accused Swaran Kaur made a disclosure in police custody that she had kept concealed half empty bottle of acid in her house behind a photo on a shelf and could get the same recovered. The said acid bottle was recovered. On 31st March, 2005, he arrested accused Avtar Singh in a raid conducted in Village Sahauran. Further, on 1st April, 2005, accused Jagmohan Singh gave a disclosure statement that he has kept concealed his TVS Motor Cycle in a room and he could get it recovered. Thereafter, accused Darshan Singh disclosed that he had kept a folding iron chair concealed in the house of Avtar Singh and he could get it recovered. Both the TVS Motor Cycle and folding iron chair were recovered from the disclosed places and were taken into possession.

12. The prosecution also examined Bhupinder Singh (PW-16) as the witness of extra-judicial confession. He stated that he was present in his house on 30th March, 2005. At about 10 am, accused Swaran Kaur, Jagmohan Singh and Darshan Singh present in the court came to his house. Swaran Kaur told him that they have committed a big blunder and that she had put a Dupatta on the neck of her mother-in-law Surjit Kaur and was

strangulated. Darshan Singh gave a Kursi (chair) blow on the flank of Surjit Kaur when Jagmohan Singh caught hold of Surjit Kaur by her arms and, as a result thereof, Surjit Kaur died. Swaran Kaur also told him that she poured acid on deceased face. The dead body was kept in a gunny bag and put in a cupboard. Swaran Kaur further stated that the dead body was taken on a motor cycle for being thrown in the canal along with Jagmohan Singh. However, when they reached the bridge there was "Kacha Rasta" (unmetalled path) and because of the water, the motor cycle could not pass through and they threw the gunny bag in the fields of wheat. Swaran Kaur also said that police were looking for them and asked him to produce them before the police as he was acquainted with the police. Accused Jagmohan Singh also confessed that a big mistake had been committed by them and they had killed Surjit Kaur. Darshan Singh also confessed that he along with Swaran Kaur and Jagmohan Singh have committed the murder of Surjit Kaur and recounted the same story. They also disclosed the motive of the murder being that Surjit Kaur was asking for lease money of her land. Further, Bhupinder Singh (PW-16) stated that he produced the accused before the police on 30th March, 2005. He also stated that prior to the visit of the accused persons to his house on 30th March, 2005, he had no idea about the death of deceased Surjit Kaur. However, he stated that he does not remember whether he has mentioned the confessions in his statement recorded under Section 161 of the Code before the police.

13. The learned trial court relied upon the statement of Bhupinder Singh (PW-16) and that of Kuldeep Singh (PW-13) to convict the accused Jagmohan Singh, Swaran Kaur and Darshan Singh. Learned trial court found that the testimony of Sukhdev Singh (PW- 14) cannot be used to prove the culpability as he could not establish the identity of those persons in the court. The learned trial court found that there is no challenge to the testimony of Kuldeep Singh (PW-13) that deceased Swaran Kaur had been living alone in a room which shows that she was not living with her son Avtar Singh and his family in the old age indicating that relations of the deceased with her son and daughter-in-law were not cordial. Statement of Harpal Singh (PW-11) Sarpanch was referred to come to the conclusion that Surjit Kaur approached him complaining non-payment of lease money by her son Avtar Singh. He came to know about death of Surjit Kaur from the newspaper reports.

14. The High Court dismissed the appeals filed by the appellants relying upon the statements of Kuldeep Singh (PW-13) and Bhupinder Singh (PW-16) and the motive proved by Harpal Singh (PW-11).

15. Before this Court, the learned counsel for the appellants submitted that the prosecution has failed to complete the chain of events so as to lead only one conclusion that the appellants and the appellants alone have committed the crime. The evidence of last seen has not been believed by the trial court. In the absence of evidence of last seen, the other evidence is of extra judicial confession. It is argued that extra judicial confession is a weak evidence and can be made basis of conviction if the person before whom confession is made appear to be unbiased and not even remotely inimical to the accused. Reference was made to the judgment reported as *Ajay Singh v. State of Maharashtra*¹ and *S.Arul Raja v. State of Tamil Nadu*².

16. It is also argued that no motive can be attributed to the accused as the deceased was last seen by Kuldeep Singh (PW-13) on 20th March, 2005 and as per medical evidence, the probable time of death is 20th March 2005 or so. It is thus argued that the witness was the only person who had met the deceased immediately prior to her death and it is he who has to explain the death of the deceased. The deceased was staying in Village Behrampur, Village of Kuldeep Singh (PW-13). Therefore, in the absence of any evidence that deceased was staying in Village Sahauran, the findings recorded by the courts below are not sustainable. It is also argued that as per postmortem report (Ex. PJ), cause of death is poisoning due to Aluminium Phosphide insecticide, haemorrhage and haemo-thorax, but there is no evidence as to how the poison was administered nor there was any recovery of poison. It is contended that if the death was due to strangulation, poison in the body negates the prosecution story. It is also argued that a fracture of Hyoid bone does not necessarily mean strangulation. He placed reliance upon *Sharad Birdhichand Sarda v. State of Maharashtra*³ and *Devi Lal v. State of Rajasthan*⁴ as to how the circumstantial evidence can be made basis for conviction and that none of the circumstances are satisfied by the prosecution.

17. On the other hand, Ms. Gogia, learned counsel for the State argued that though the evidence of last seen has not been accepted but the fact remains that the statement of Sukhdev Singh (PW-14) is relevant to the extent that he had seen one man and a woman on TVS Motorcycle though he could not identify the person who were riding on such motorcycle. Still further, Harpal Singh (PW-11), the Sarpanch had deposed in respect of motive of the offence as the deceased had inherited the property of Gurmit Singh, her other son who died issueless. It is the share of the property of Gurmit Singh which became the point of conflict inasmuch as the said land was given on lease by the deceased to her other son Avtar Singh. Surjit Kaur had even approached Sarpanch for non-payment of lease money by the accused. Learned counsel for the State also refers to the statement of Kuldeep Singh (PW-13), son-in-law of the deceased to the effect that she was living separately and not with her son and daughter-in-law. He deposed about the inheritance of land of Gurmit Singh and lease of land to Avtar Singh at the rate of Rs.4,000/- per Bigha. In cross-examination, he stated that Gurmit Singh died in the year 2003. He also stated that deceased was first married to Bant Singh and her second marriage was with Amar Singh. She had a girl child from her first marriage. Ujjagar Singh is the husband of that girl. The statement of Ujjagar Singh was also recorded in the Police Station identifying dead body of the deceased. Further, Kuldeep Singh states that on 29th March, 2005, he received a telephone call and read in the newspaper that a dead body has been found giving description of the body and the clothes. He identified the dead body as that of his mother-in-law. In cross-examination, he deposed that on 20th March, 2005, Surjit Kaur had not come to his house (in Village Behrampur Zimidara) but he met her in Panchayat, Village Sahauran. He had not gone to visit in-laws house on 20th March, 2005. He inquired from several relatives about the availability of Surjit Kaur. He deposed that none of the accused were present at the time of cremation in the Village Sahauran and none of Avtar Singh's children were present at the time of cremation. Further, a prayer meeting was held after seven days of cremation on a Sunday, here one son of Avtar Singh along with his younger daughter was present. He further stated that the deceased had visited his house 25 days

prior to the occurrence for 2 days and that he never telephoned her between the time she left his place till 20th March, 2005, when he met her in the Panchayat at Village Sahauran. He denied the suggestions that deceased never went back to Village Sahauran.

18. Learned counsel for the State further submitted that Balwant Singh (PW-15), Investigating Officer deposed that he opened gunny bag wherein a dead body of woman was recovered. He got photograph of the dead body. On further search of the dead body on 29th March, 2005, he recovered a small telephone diary which was lying in the inner side pocket of the undershirt of the dead body and was having telephone numbers of some persons. Such diary was taken in possession vide recovery memo Ex- PM. He got published the photograph and news of the recovery of unidentified dead body of a woman. He had also tried to contact by calling the numbers noted in the diary. It was on 29th March, 2005, Kuldeep Singh and Ujjagar Singh, son-in-laws of the deceased came to the Mortuary and identified the dead body as that of Surjit Kaur from the clothes as the face of dead body was dis-figured by pouring acid. The photographs produced in evidence proves the disfigurement of the face and that the body could be identified only by the clothes worn by the deceased. He deposed that he conducted raids for arresting the accused named by Kuldeep Singh and Ujjagar Singh but could not found the accused in Village Sahauran. It was on 30th March, 2005, Bhupinder Singh (PW-16) produced the accused Darshan Singh, Swaran Kaur and Jagmohan Singh before whom they have made confessional statements. It was stated that Avtar Singh has not suffered any extra judicial confession before Bhupinder Singh (PW-16). On the basis of disclosure statement of Swaran Kaur (Ex- PZ), empty half bottle of acid was recovered from her house.

19. Learned counsel for the State relies upon judgment of this Court reported as *Ram Lal v. State of Himachal Pradesh*⁵ to contend that the evidence of extra judicial confession need not in all cases be corroborated. It was held as under:

"14. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated.

In *Madan Gopal Kakkad v. Naval Dubey*, (1992) 3 SCC 204, this court after referring to *Piara Singh v. State of Punjab*, (1977) 4 SCC 452 held that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated."

20. We have heard learned counsel for the parties and find no merit in the present appeals.

21. Gurmit Singh, other son of deceased, passed away in 2003. The deceased inherited his share of land. Out of the 5 Bighas of land so inherited, she sold 1 Bigha for Rs.1,02,000/- whereas she leased the remaining 4 Bighas to her other son, Avtar Singh. The lease money

was not being paid to her and this fact has been stated by Sarpanch (Harpal Singh) (PW-11) and also by Kuldeep Singh (PW-13), the son-in-law of the deceased. The lease money was the only source of survival of the old woman who was living in a separate room and not with her son, Avtar Singh. Harpal Singh (PW-11) has also deposed that only a sum of Rs.1,000/- had been paid with a promise to pay another sum of Rs.1,000/- later. It, thus, transpires that the deceased was living separately and was not being paid the lease money which was necessary for her survival.

22. Further, the appellants were not found in the village soon after the occurrence as deposed by Kuldeep Singh (PW-13) and investigating officer Balwant Singh (PW-15). They did not attend the cremation or the prayer ceremony which was held after one week. The conduct of the appellants of not being available in the village is a strong circumstance of their conduct post death.

23. There is no evidence led by the prosecution of administering Aluminum Phosphide but the postmortem report indicates fracture of Hyoid bone. As per postmortem report, the Dupatta around the neck of the deceased had two turns which is unusual for a woman, more so, for a woman of the age of deceased. The argument that no ligature mark was found on the deceased is of no relevance as the body had been infected with maggots. Therefore, the ligature mark on the soft tissue would not have survived.

24. Furthermore, the bottle of acid was recovered on the basis of disclosure made by accused Swaran Kaur. The photographs that were taken showed disfigurement of the face of the deceased. Such disfigurement was caused by pouring of acid with intention to avoid identification of the dead body.

25. Although the witness (PW-14) of last seen could not identify the appellants, but the fact remains that he identified that a jute bag was thrown by a man and a woman who came on a TVS Motorcycle. Therefore, even though the witness could not identify the appellants in court as the persons who had thrown the jute bag, the fact that the jute bag was thrown by a man and a woman on a TVS motorcycle is relevant in chain of events in support of the prosecution case.

26. Another argument raised by Mr. D.P. Singh which needs mention is that Darshan Singh is not a member of family and has no motive in the commission of crime. It is observed that Darshan Singh was convicted on the basis of extra-judicial confession made before Bhupinder Singh (PW-16). In the extra-judicial confession, Darshan Singh has deposed that he has given a Kursi (Chair) blow on the flank of Surjit Kaur. The postmortem report (Ex. PJ) shows fracture of Hyoid bone, an irregular wound over the left breast and fracture of the 6th and 7th rib. Therefore, the extra-judicial confession made by Darshan Singh is also supported by medical evidence. Further, Darshan Singh had also disclosed that he had kept concealed a folding iron chair in house of Avtar Singh, the said chair was recovered. The prosecution has proved the chain of circumstances to hold the appellants guilty of the offences charged.

27. In view of the evidence led and the finding recorded by the Courts below, we do not find any merit in the present appeals. Accordingly, both the appeals are dismissed. The sentence of the appellants were suspended by this Court. They shall now surrender to undergo the remaining sentence.

Judgment Referred.

¹*for short, 'Code'*

²*(2007) 12 SCC 0341*

³*(2010) 8 SCC 0233*

⁴*(1984) 4 SCC 0116*

⁵*(2019) SCC OnLine 0039*

⁶*(2018) SCC OnLine SC 1730*