

Kulvinder Singh & Anr vs State Of Haryana on 11 April, 2011

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 916 of 2005

Kulvinder Singh & Anr.

...Appellants

Versus

State of Haryana

...Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 31.8.2004 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 167-DB of 1999, by which it has affirmed the judgment and order of the Trial Court in Sessions Case No. 5 of 1998 dated 22.2.1999 convicting the appellants for the offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and awarding the sentence of life imprisonment and imposing a fine of Rs.2,000/- each.

2. FACTS:

(A) That on 9.10.1997, some labourers were working in the fields of Ishwar Singh (PW.2) and his son Amardeep was also with them.

On that date at about 7.00 PM, Ishwar Singh (PW.2) started from his house for his fields in order to keep watch on the crop, relieving Amardeep from the fields. On his way, Ishwar Singh (PW.2) saw Kulvinder Singh and Jasvinder Singh/appellants at the tubewell of Singh Ram. Kulvinder Singh was sitting on a cot outside the tubewell while Jasvinder Singh was inside the tubewell. On being asked by Ishwar Singh (PW.2), Kulvinder Singh replied that they were there in a routine manner as it was the tubewell of Singh Ram, the father of Jasvinder Singh. Kulvinder Singh is the son of the maternal uncle of Jasvinder Singh. After reaching his fields, Ishwar Singh (PW.2) relieved his son Amardeep of his duties. The next morning i.e., on 10.10.1997, at about 6.00 AM, the labourers of Mange Ram, Sarpanch, (PW.11) of the same village came and told him that a dead body was lying near the paddy field in the water channel. Mange Ram (PW.11) reached the spot with his labourers.

By that time several other villagers had also collected there and they identified the dead body as being that of Amardeep. They also found a large number of wounds caused by a sharp-edged weapon on the body. They immediately called Ishwar Singh (PW.2), father of the deceased to the spot.

(B) Mange Ram (PW.11) then started for Police Station Radaur to make the report, however, he met Roop Chand SI/SHO, Police Station Radaur (PW.14) on the way and informed him that Amardeep had been murdered by some unknown person by assaulting him with sharp edged weapons. Roop Chand, SI, (PW.14) asked Mange Ram (PW.11) to go to the Police Station to lodge the complaint formally. Thus, the FIR was lodged. Roop Chand, SI, (PW.14) reached the place of occurrence and examined the dead body as well as the place where it was lying. He prepared the inquest report and sent the dead body of Amardeep for postmortem examination. Roop Chand, SI, (PW.14) also got the spot photographed, prepared a rough site plan of the place of occurrence and recorded the statements of the witnesses in which Ishwar Singh (PW.2) told him that about 8 to 10 days before the date of occurrence, he saw Jasvinder Singh/appellant grappling with his son Amardeep while they were playing kabaddi. He intervened and asked the reason for the same and Jasvinder Singh had disclosed that Amardeep was teasing his sister and wife. Ishwar Singh (PW.2) reprimanded his son Amardeep for the alleged misconduct, however, Amardeep protested and told him that the accusation was false.

During the course of the investigation, Roop Chand, SI, (PW.14) also came to know that on 9.10.1997 at about 7.30 PM, Ranbir Singh (PW.3) had started for his fields and when he was by the side of bund of the village, he heard shrieks from the place where the dead body of Amardeep was found lying the next morning. He also saw both the appellants running fast and they crossed him and on being asked as to why they were running, they did not give any reason but rather told him that they were running fast without any purpose.

However, Ranbir Singh (PW.3) came to know only next morning that Amardeep had been murdered.

(C) On 13.10.1997, Phool Singh (PW.10) produced the accused before Roop Chand, SI (PW.14) and told him that they had made extra-judicial confession before him about the killing of Amardeep, because the latter was teasing the wife and sister of Jasvinder Singh.

Both the appellants were arrested and interrogated. On their disclosure, the clothes they had put on at the time of occurrence, which had already been washed, were recovered. On disclosure of Jasvinder Singh-appellant, the barchha used for committing the crime was recovered on 14.10.1997. After conducting the postmortem examination, Dr. Vijay Mohan Atreja (PW.9) gave a report stating that there were 22 injuries on the person of Amardeep and the same could have been caused by a barchha. The barchha recovered on the disclosure of the appellant-Jasvinder Singh had blood stains on it at the time of recovery. Roop Chand, SI, (PW.14) recovered the blood stained chappals and the blood stained earth from the spot and sent all those items alongwith barchha and clothes to the Forensic Science Laboratory. After completing the investigation, a chargesheet was submitted against the appellants.

The court after completing the formalities committed the case to the Sessions Court vide order dated 20.1.1998. They were charged under Sections 302 read with 34 IPC vide order dated 20.2.1998 to which the appellants pleaded not guilty and claimed trial.

(D) The prosecution examined 14 witnesses at the trial including Ishwar Singh, (PW.2); Ranbir Singh (PW.3), who saw the accused running fast and crossing him on the evening of 9.10.1997 and heard the shrieks from the place of occurrence; Dr. Vijay Mohan Atreja (PW.9), who conducted the postmortem examination alongwith Dr. Ashwani Bhatnagar on the dead body of Amardeep;

Phool Singh, (PW.10) before whom the extra-judicial confession was made by the appellants; Mange Ram, Sarpanch, (PW.11) complainant/informant in the case; Mam Chand (PW.12), witness to the recovery of barchha on the disclosure statement of the appellant Jasvinder Singh; and Roop Chand (PW.14), the investigating officer.

The reports of the Serologist were tendered in evidence. On closure of the prosecution case, the Trial Court examined the appellants/accused under Section 313 of Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.'). Both the accused denied their participation and pleading that they had been falsely implicated.

(E) After considering the entire evidence on record, the Trial Court vide judgment and order dated 22.2.1999 convicted both the appellants for the offence punishable under Section 302 IPC and awarded the sentence of life imprisonment and a fine of Rs.2,000/-

each.

(F) Being aggrieved, the appellants preferred Criminal Appeal No. 167-DB of 1999 which has been dismissed by the High Court vide judgment and order dated 31.8.2004. Hence, this appeal.

3. Shri S.P. Laler, learned counsel appearing for the appellants, submitted that it is a case of circumstantial evidence; that there was no motive for committing the murder of Amardeep; that there had been material contradictions in the evidence of the witnesses; the chain of circumstances could not be completed; in the facts of the case the extra-judicial confession could not be relied upon by any means; the theory of the deceased being last seen with the appellants cannot be applied. Involvement of both the appellants in the commission of the offence is doubtful as the injuries found on the person of the deceased had been caused only by one weapon. The courts below have erred in convicting the appellants and, therefore, the judgments and orders of the courts below are liable to be set aside.

4. Shri Rajeev Gaur "Naseem", learned counsel appearing for the respondent-State, has opposed the appeal contending that both the courts below have recorded concurrent findings of fact after appreciating the entire evidence on record. Earlier there had been a fight between Jasvinder Singh-appellant and Amardeep- deceased.

Jasvinder Singh-appellant had a grudge against Amardeep, as Amardeep had teased his wife and sister and this fact had come to the notice of Ishwar Singh (PW.2), father of the deceased. Thus, motive stood fully established. Evidence of Phool Singh (PW.10) regarding the extra-judicial confession is to be believed for the reason that he was the Ex-Sarpanch of the village and the appellants/accused had gone to him, so that he could produce them before the police. In fact, the appellants/accused were produced by Phool Singh (PW.10) before the police and they had disclosed to him that they had murdered Amardeep. Appellants were seen together with the deceased just before the commission of the crime. Twenty two injuries were found on the person of Amardeep-deceased, and even if they had been caused by one weapon, it is not possible for a single person to cause so many injuries, as the deceased was a young man of 25 years and of 5 ft. 10 inch height, while the appellants were at that time 19 and 23 years of age respectively. Even if there is any contradiction in the statements of the witnesses, it is so trivial that it cannot be taken note of. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. The courts below have examined the entire evidence on record and reached the conclusion that chain of circumstances stood completed and all the circumstances pointed towards the guilt of the accused. Such findings stand fully substantiated by the depositions of the witnesses in the court. The

offence was committed in the evening of 9.10.1997 and in respect of the same, an FIR was lodged on 10.10.1997 and the extra-judicial confession has been made on 13.10.1997. Thus, for three days, the appellants remained wanted in the case. Ishwar Singh (PW.2), the father of Amardeep-deceased, deposed that about 8/10 days prior to the incident while he was returning home with his son Kuldeep, he saw Jasvinder Singh, appellant/accused playing Kabaddi with his son Amardeep-deceased and suddenly they started quarrelling with each other and on being asked Jasvinder Singh-accused had told him that Amardeep-

deceased was teasing his sister and wife though Amardeep-deceased protested and told him that he was telling a lie. The statement of Ishwar Singh (PW.2) in respect of motive also gets corroborated by the statement of Saheb Singh (PW.13), an independent witness to the extent that a month prior to the murder of Amardeep, Jasvinder Singh-accused made a complaint to two-three persons about Amardeep-deceased teasing his sister. The statement of Saheb Singh (PW.13) has been scrutinised by both the courts below and had been found trustworthy on the ground that he did not depose anything about the incident of quarrel between Jasvinder Singh-accused and Amardeep-deceased while playing Kabaddi. Thus, the Trial Court had found that he was fair and did not depose falsely. Thus, it stood established that Jasvinder Singh-accused had been harbouring in his mind the suspicion that Amardeep-deceased was teasing his sister and wife.

7. In *State of Uttar Pradesh v. Kishanpal & Ors.*, (2008) 16 SCC 73, this Court examined the issue of motive in a case of circumstantial evidence and observed that motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually prompted or excited them to commit the particular crime and thus, motive may be considered as a circumstance which is relevant for assessing the evidence and becomes an issue of importance in a case of circumstantial evidence.

Thus, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (See also:

Pannayar v. State of Tamil Nadu by Inspector of Police, (2009) 9 SCC 152; *Babu v. State of Kerala*, (2010) 9 SCC 189; and *Bipin Kumar Mondal v. State of West Bengal*, AIR 2010 SC 3638).

8. If the finding recorded by the courts below on the issue of motive is examined in the light of the law laid down by this Court in the above cases, no fault can be found with the same.

9. On the issue of extra-judicial confession, Phool Singh (PW.10) has deposed that he was the Ex-Sarpanch and both the appellants/accused approached him on 13.10.1997 and disclosed that they had committed the murder of Amardeep-deceased and he should take them to the police. He deposed that both the accused came to him at about 1.00 p.m. and he produced them before the police at about 3.30/4.00 p.m. Undoubtedly, both the appellants/accused had been arrested by the police only on 13.10.1997, as it is not the defence version that they had been arrested earlier to 13.10.1997, neither have they challenged the deposition of Phool Singh (PW.10) that he did not produce them before the police, nor it had been their case that they had been arrested from

somewhere else. Phool Singh (PW.10) faced the gruelling cross-examination but defence could not elucidate anything to discredit him and the courts below have found that the deposition of Phool Singh (PW.10) in respect of the extra-judicial confession made to him by the accused remained a trustworthy piece of evidence as rightly been relied upon.

Phool Singh (PW.10) in his statement recorded under Section 161 Cr.P.C. has stated that the appellants had told him on 13.10.1997 that due to the fear of police they were running from the pillar to post. He had a good understanding with the police being the Ex-Sarpanch and thus, he should help and produce them before the police.

10. In *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, this Court held as under:

"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

11. After going through the evidence of Phool Singh (PW.10), we reach the inescapable conclusion that Phool Singh (PW.10) is an independent witness and by no means could be held to be biased or inimical to the accused. There is nothing on record to indicate that he had any motive to falsely implicate the accused or that there was any motive for attributing an untruthful statement to the accused. He had made a crystal clear statement conveying that the accused had disclosed to him that they had committed the murder of Amardeep-

deceased. Thus, we do not find any reason not to accept his deposition in respect of the extra-judicial confession made by the appellants as his deposition stands the test of credibility.

12. Not a single witness has deposed that the appellants/accused were last seen with the deceased. However, the courts below have found that the prosecution case has been very close to the circumstances of the appellants and deceased being last seen together. Ishwar Singh (PW.2) has

deposed that the tubewell of Singh Ram is on the passage connecting his fields with the abadi of the village, where he saw both the appellants at about 7.00 p.m. Immediately thereafter, his son, Amardeep started for the village between 7.30 and 7.45 p.m. Ranbir Singh (PW.3) who heard the cries from the place of occurrence and saw the appellants running towards the village and the deceased was found to have an empty stomach at the time of occurrence as per the post mortem report had indicated that Amardeep had been murdered before he could take his evening meal. The Trial Court has examined the statement of Ranbir Singh (PW.3) minutely and rejected the defence version that in such a circumstance it was unnatural on the part of this witness not to go to the source of shrieks, giving explanation that after hearing the shrieks he stopped on his way to the village and immediately thereafter he saw both the accused running fast and crossing him. On being stopped and asked by Ranbir Singh (PW.3), the appellants told him that they were running without any specific purpose. Immediately thereafter, he could not hear any cry.

Therefore, he did not inspect the place from where the cries seem to be coming. Thus, the Trial Court reached the conclusion that though it was not a case where the accused had been last seen together with the deceased, however, in a case when the accused had the opportunity to commit the crime and they had the motive on their part to do so, such a circumstance can also be taken note of.

13. In *State of U.P. v. Satish*, (2005) 3 SCC 114, this Court held that the last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Similar view has been reiterated in *Mohd.*

Azad alias Samin v. State of West Bengal, (2008) 15 SCC 449.

14. The Trial Court has given cogent reasons for believing Ranbir Singh (PW.3) observing that Ranbir Singh (PW.3) was an independent witness and only 1-1/2 killa away from the tubewell of Singh Ram wherefrom he heard the cries. He did not go to the place wherefrom the shrieks had been coming assuming that the same had been made by the accused and such a course could not be unnatural.

In spite of the fact that Shri Laler, learned counsel appearing for the appellants has taken us through the evidence on record, we do not find any cogent reason to interfere with such a finding of fact.

15. The barchha used as a weapon in the crime had been recovered from the sugarcane field. It had blood stains on it and had been thrown at a place where it was not visible to all. In the instant case, as the motive stood proved distinctly, recovery of a blood stained barchha from the sugarcane field at the disclosure of Jasvinder Singh-accused is a circumstance which can safely be relied upon for the conviction of the appellants-accused. As both the appellants had been seen immediately before the occurrence at the place of occurrence and the deceased had come there shortly thereafter, they had an opportunity to kill Amardeep. After the occurrence, they were seen running together from the place of occurrence by Ranbir Singh (PW.3). Such a conduct, if examined, with another circumstance i.e. the extra-judicial confession made by the appellants before Phool Singh (PW.10),

completes the chain of circumstances pointing to the guilt of the appellants-accused.

16. It is a settled legal proposition that conviction of a person in an offence is generally based solely on evidence that is either oral or documentary, but in exceptional circumstances conviction may also be based solely on circumstantial evidence. The prosecution has to establish its case beyond reasonable doubt and cannot derive any strength from the weakness of the defence put up by the accused.

However, a false defence may be called into aid only to lend assurance to the Court where various links in the chain of circumstantial evidence are in themselves complete. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The same should be of a conclusive nature and exclude all possible hypothesis except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(vide: Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; and Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200).

17. In a case like this, where all circumstances stand proved against the appellants, their defence may be examined to test the circumstances stood proved against them. In the instant case, Kulvinder Singh, appellant No.1 is a resident of another district. He had not taken the plea of alibi, nor led any evidence to support the hypothesis that he was not present at the place of occurrence on the date of incident. His only plea has been that he had falsely been implicated without saying anything further.

18. Shri Laler, learned counsel appearing for the appellants has challenged the statement made by Ranbir Singh (PW.3) that he went to the place of occurrence in the morning on 10.10.1997 at 9.00 AM.

The police had reached there. "Police remained there till the accused were arrested" stating that it cannot be true as, admittedly, the appellants had been arrested on 13.10.1997 on being produced by Phool Singh (PW.10). Ranbir Singh (PW.3) did not remain present for three days at the place of occurrence. The relevant part of the cross-examination has to be read as a whole in order to examine the correctness of the submissions so advanced on behalf of the appellants. The relevant part reads as under:

"I reached the tubewell of Singh Ram on the next morning at 9.00 a.m. Police had reached the place by that time. Police did not record statement of anyone else in my presence. Police remained at the spot till the accused were arrested. I cannot tell when the accused were arrested."

19. By reading the aforesaid part of the statement it cannot be held that Ranbir Singh (PW.3) had deposed that the appellants had been arrested in his presence, as he was not even aware when they had been arrested. So his statement has to be understood in the following way: That the police remained at the place of occurrence for several days and may also mean till 13.10.1997 when the accused were arrested. Thus, no case is made out for interference on this count also.

20. The last submission advanced by Shri Laler had been that if injuries had been caused by one weapon as deposed by Dr. Vijay Mohan Atreja (PW.9), the involvement of Kulvinder Singh-

appellant No.1 becomes doubtful and he should be acquitted giving him the benefit of doubt. According to the post mortem report, the following injuries were found on the body of Amardeep-deceased, aged 25 years.

1. Incised wound on the left palm on the thenar eminence placed obliquely 4 cm x 1 cm tapering downwards and laterally towards the left thumb 2 cm deep at the medial side.

2. Incised wound 2 cm x 1 cm each on the palmar aspect of lower phalanx of left index and middle finger and upper phalanx of the left little finger.

3. Incised wound 9 cm in length x 1 cm on the medial aspect of the mid left forearm placed obliquely, 7 cm below the left elbow.

4. Incised wound 3.5 cm x 1 cm placed obliquely on the right forehead starting from the medial side of the right eyebrow and extending upward and laterally 4 cm above the lateral border of right eyebrow.

5. Incised wound 5 cm x 1 cm on right eye lid just below the right eyebrow and extending laterally and over the skin 2 cm lateral to the lateral angle of the right eye.

6. Incised wound 14 cm x 2.5 cm on the front of the face starting from the right cheek bone's prominence traversing obliquely towards the left on the left cheek.

7. Incised wound 5.5 cm x 1 cm on the face just below the tip of the nose placed horizontally parallel to the upper lip.

8. Incised wound 4 cm x 1 cm on the right side of the chin starting from the right angle of the lower lip and extending downward and medially towards the chin.

9. Stab wound tapering at both ends 2 cm x 1 cm on the right side of the neck placed obliquely 3 cm below from the right angle of the mandible going medially and downwards.

10. Stab wound 2 cm x 2 cm placed on the anterior aspect of the middle of the neck transversely.

11. Stab wound 4 cm x 2 cm on the left side of the neck 2 cm below the right angle of mandible.

12. Stab wound 2.5 cm x 2 cm placed vertically placed lateral to injury no.1 (3 cm) and 6 cm from the left mastoid.
13. Stab wound 4 cm x 3 cm on left axillary fold (anterior) place vertically spindle shape tapering upwards.
14. Stab wound 4 cm x 2 cm elliptical at lower border of left axilla placed vertically.
15. Stab wound 7 cm x 3 cm elliptical, placed obliquely starting from 5 cm lateral to left nipple and extending upto 3 cm medial to injury no.14.
16. Stab wound 4 cm x 3 cm elliptical placed obliquely on the left chest, 15 cm from the midline and 7 cm below the injury no.15.
17. Incised wound 6 cm x 2 cm placed obliquely on left side of chest 3 cm below and lateral to injury no.16.
18. Stab wound 4 cm medial to left iliac crest placed transversely 5 cm x 2 cm. The loops of small intestine were coming out of the wound.
19. Incised wound 4.5 cm x 2 cm placed obliquely on the right inguinal ligament.
20. Incised wound 8 cm x 5 cm placed transversely parallel to the upper border of left scapula in the supra scapular region.
21. Incised wound 1.5 cm x 1 cm placed transversely on the interior side of left leg in the middle.
22. Incised wound 3 cm x 2 cm on the left posterior axillary line 12 cm below left axilla placed vertically going upto the left chest wall.

According to Dr. Vijay Mohan Atreja (PW.9), the cause of death in this case was shock and hemorrhage due to extensive injuries to the vital organs. All these injuries were found to be anti-

mortem in nature and sufficient to cause death in the ordinary course of nature.

The injuries look as if received by a person whilst trying to save himself.

21. The age of the appellants at the time of occurrence had been shown on the record as 19 and 23 years respectively and the deceased was 5 ft.10 inch tall and 25 years of age. It is difficult to imagine that one person could cause 22 injuries on such a well-built person unless the other persons had caught hold of him. All the injuries found on the person of the deceased are on front side of the body and not a single injury has been found on the back. Such injury could not have been caused unless somebody had caught hold of the deceased from the back. It is a case of circumstantial evidence and in the facts and circumstance of the case, the submission made by Shri Laler is merely worth taking

note of and not worth consideration.

22. In view of the above, we do not find any force in the appeal and is, accordingly, dismissed.

.....J. (P. SATHASIVAM)J. (Dr. B.S. CHAUHAN) New Delhi, April 11,
2011