

MUKHTIAR SINGH AND ORS.

A

v.

STATE OF PUNJAB

NOVEMBER 30, 1995

[DR. A.S. ANAND AND K. VENKATASWAMI, JJ.]

B

*I.P.C.—Section 302 and 201—Allegation that the in-laws caused the death of the deceased—Cousin of deceased was the eye-witness—Incident not told to anyone by the cousin—Held, conduct of the cousin is unnatural and his evidence is not reliable—Body cremated one day after the death—Held, there was no undue haste in cremation.*

C

It was the case of the prosecution that P.W. 3 was the cousin brother of the deceased. On March 11, 1984 at around 5 p.m., he heard noise from the side of the house of the appellant and went there. It is alleged that he saw that the appellant No. 1 (who was the husband of the deceased) and his family members were assaulting the deceased with "dangs" and as a result of the assault, she fell down. He allegedly protested but to no avail. P.W. 3, thereafter, left for his village and on way he narrated the incidence to P.W.4. However, he did not report incident either to the police or to the relatives of the deceased.

D

E

It was further alleged by the prosecution that when the body was being cremated by the accused at 2 p.m. on March 12, 1984, on being informed about the fate of his daughter by one X, the father of the deceased along with few others reached the spot and on seeing them the appellants ran away. The matter was thereafter, reported to the police and a case was registered against the appellant.

F

During trial the prosecution examined one witness to show that the deceased was being ill-treated by her in-laws. The witness in his evidence, mentioned that the deceased had informed him that she was slapped about fifteen days prior to the occurrence. P.W. 7 was examined to prove the alleged extra-judicial confession made by some of the appellants.

G

The Special Court convicted the appellant No. 1 under Section 302 I.P.C. and the remaining appellants under Section 201 I.P.C. The appellants appealed to this court under Section 14 of the Terrorist Affected

H

**A Areas (Specific Courts) Act, 1984.**

Allowing the appeal, this court

**B HELD : 1. The only incident upon which the allegations of the deceased being maltreated were based, was allegedly a slap given to the deceased about fifteen days prior to the occurrence. If in nine years of married life, this was the only incident which could be recounted, it may be said that the allegations regarding maltreatment of the deceased by the appellants have not been proved. [832-D]**

**C 2. Evidence of P.W. 3 does not at all inspire any confidence. His conduct belies his testimony. Though closely related to the deceased he did not inform about what he had seen to anyone at all except to P.W.4 who has in his deposition belied the statement of P.W. 3; he did not raise any alarm when injuries were being caused to the deceased and though the police station is at a distance of 5 kms. from the village and he, besides being relative of the deceased is also the sarpanch of the village, he did not go to lodge any report. Not only did he keep quiet about it on the date of the occurrence but on his own showing, even on the next day he did not convey the information to anyone till his statement came to be recorded during the inquest proceedings at the cremation ground. [833-C; 832-G-H; 833-A]**

**E 3. P.W. 7 has been examined by the prosecution to support its version regarding the alleged extra judicial confession made by some of the appellants to him and his producing the appellants before the police. The investigating agency falsely introduced this witness to lent support to another false witness, P.W.3 and thereby exposed the tainted nature of investigation. [833-D; F]**

**F 4. The medical evidence is neither decisive nor conclusive and it fails to connect the appellants with the crime and does not go against the defence version of the deceased having died instantaneously as a result of the fall. The absence of any bony injury is more consistent with the defence version than the prosecution case. [834-B]**

**G 5. The conduct of an accused is indeed a relevant consideration to be taken note of by the courts while considering the correctness or otherwise of the prosecution version but in this case evidence led by the prosecution to demonstrate the guilty conscience of the appellants is wholly unsatisfactory. Had the accused any intention to cremate the body "secretly" or in "hot**

**H**

haste", as found by the trial court, nothing prevented them from disposing the dead body during the night intervening 11th and 12th March 1984. The prosecution has miserably failed to establish that the appellants had run away from the cremation ground on the arrival of the relatives of the deceased. On the contrary it appears, as stated by the appellants themselves in their statements recorded under Section 313 Cr. P.C. that they had been arrested from the cremation ground itself and taken into custody by the investigating officer. The prosecution has thus failed to establish any incriminating conduct on the part of the appellants. [834-D; G; 835-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 480 of 1985.

From the Judgment and Order dated 5.6.85 of the Special Court, in Ferozepore Zone, Faridkot, Punjab in Case No. 20 of 25.7.84 R.T. No. 3 of 10.12.84.

R.L. Kohli and R.C. Kohli for the Appellants.

Mrs. Amita Gupta and R.S. Suri for the Respondent.

The following Order of the Court was delivered :

The appellants along with Gurmukh Singh and Sunder Singh were sent up for trial before the learned Additional Judge of the Special Court, Ferozepur Zone, Faridkot for various offences in connection with the death of Pritam Kaur wife of Mukhtiar Singh appellant. Gurmukh Singh and Sunder Singh were acquitted of all the charges. Appellant Mukhtiar Singh was convicted for an offence under Section 302 IPC and sentenced to suffer life imprisonment and to pay a fine of Rs. 500 and in default, to undergo six months R.I. The remaining appellants Kartar Singh, Ran Singh, Dhan Singh and Piara Singh were convicted for the offence under Section 201 IPC and sentenced to two years RI each and to pay a fine of Rs. 200 each and in default of payment of fine, to further undergo RI for one month each. They have filed this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 challenging their conviction and sentence.

The prosecution case is that Pritam Kaur deceased was married to Mukhtiar Singh appellant. She was the cousin sister of Kartar Singh PW3 and Badri Singh PW5. The relationship between Mukhtiar Singh and

- A Pritam Kaur - deceased were said to be strained and the deceased was being maltreated in her matrimonial home. One 11.3.84, Kartar Singh PW3 - a cousin of the deceased and Sarpanch of the village was irrigating his field at about 5 p.m. when he heard noise from the side of the House of the appellants and went there. He found all the appellants present armed with dangs. In his presence, Kartar Singh appellant exhorted his sons to finish Pritam Kaur deceased and thereupon his sons assaulted the deceased with dangs on various parts of her body. Appellant Mukhtiar Singh dealt a dang blow on the back of the neck of Pritam Kaur as a result of which she fell down and died. Kartar Singh PW3 protested but was told to mind his own affairs by the appellants. He left for the village and on the way,
- B met Bhag Singh PW 4 and narrated the occurrence to him. On 12.3.84 C Badri Singh PW5 had gone to village Mansinghwal to have a round of his land which was under cultivation of his brother, Kartar Singh PW 3. After having a round of the fields, he went to the house of his cousin, Pritam Kaur deceased and on reaching there, found the dead body of his cousin 'Pritam Kaur lying near the door of the residential room. It was covered with a chaddar. Badri Singh PW 5 removed the chaddar from the face of the deceased and noticed some stiffness at the back of the neck. He became suspicious and immediately left for village Sandahwan to inform Harnam Singh - father of the deceased. Accompanied by Harnam Singh, Dhan Singh and Ran Singh (accused) were feeding fire to the pyre. On seeing Badri Singh, Balwant Singh PWs and others, they all ran away leaving the dead body on the pyre and a tractor trolley nearby. The fire was extinguished and the half burnt dead body was removed from the pyre. Leaving Balwant Singh, Wazir Singh and Harnam Singh to take care of the dead body, Badri Singh PW5, accompanied by Sunder Singh PW went to report the incident to the police. When they both reached near Sadiq Chowk, Harbhagwan Singh SHO, Police Station, Sadiq met them. Badri Singh made a statement before him Ex. 25, which was sent by the SHO to the Police Station and on the basis thereof a formal FIR Ex. P5/B was registered. SI Harbhagwan Singh PW9 thereupon took up the investigation in hand and rushed to the cremation ground. He took possession of the dead body and after preparing an inquest report Ex. P3 sent the dead body to Faridkot for post mortem examination. The autopsy on the dead body
- H was conducted by a panel of three doctors, under the supervision of Dr.

J.S. Dalal, PW 1. The medical board, after post mortem examination, gave the opinion that the cause of death was coma as a result of dislocation of the 2nd and 3rd cervical vertebrae and that the injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature. On completion of the investigation, the appellants were sent up for trial. Mst. Lachmi, wife of Kartar Singh was discharged at the initial stages itself by the trial court.

The prosecution, with a view to connect the appellants with the crime, relied upon :

- (i) Motive;
- (ii) Direct Evidence of assault on the deceased ;
- (iii) Extra Judicial Confession;
- (iv) Medical evidence;
- (v) Conduct of the appellants

Kartar Singh appellant in his statement under Section 313 Cr. P.C. which was also adopted by Mukhtiar Singh and his other sons denied the prosecution allegations and gave the defence version to the effect that the deceased had slipped from the last step of the bamboo stair-case while climbing on to the roof of the house and had fallen down and instantaneously died. His sons Mukhtiar Singh and others were at that time not at the house and were irrigating their fields. He sent information to them about the death of Pritam Kaur on receipt of which, they all returned to the house. He went on to say that he had informed Kartar Singh PW3 - sarpanch of the village who was a cousin of the deceased and requested him to inform the parents of the deceased and after waiting till about 2 p.m. on the next day i.e. for about 20 hours, they took the dead body for cremation and that while the dead body was being cremated, the appellants arrived there along with some relations of the deceased and the police and after taking the dead body into custody the police arrested them. He denied that the relations between Mukhtiar Singh and the deceased were strained. Mukhtiar Singh appellant also gave a similar version in his statement under Section 313 Cr. P.C. and asserted that the deceased was never maltreated.

- (i) *Motive* According to the prosecution case, the relationship be-

A tween the deceased and her husband Mukhtiar Singh appellant were strained and the deceased had told her brother Balwant Singh that she was being maltreated by her husband, father-in-law and other members of the family. The evidence to prove motive is rather scanty. Mukhtiar Singh and the deceased were married for more than 9 years. they had two sons and a daughter. Expect for Balwant Singh PW, no one else, not even Kartar Singh PW 3, Sarpanch of the Village and cousin of the deceased has spoken about any maltreatment of the deceased. Even Balwant Singh PW had to admit : "My sister was never given any beating in my presence. She had informed me about the beating when she came to our village prior to her death. We had not taken any panchayat when Pritam Kaur came to the village after the beating. I had informed my father what my sister had told me about the maltreatment but no body had gone to Mansinghwala to meet accused Kartar Singh and his sons to advise them against the maltreatment." No neighbour has come forward to support Balwant Singh either. According to Balwant Singh PW, the only incident upon which the allegations of the deceased being maltreated were based was allegedly a slap given to the deceased about fifteen days prior to the occurrence. If in 9 years of married life, this was the only incident which could be recounted, we are of the opinion that the allegations regarding maltreatment of the deceased by the appellants have not been proved. The prosecution has, thus failed to prove that Mukhtiar Singh appellant had any motive, let alone a 'strong motive' to commit the murder of the deceased. The finding of the trial court to the contrary is not based on any evidence and is a conjectural finding.

(ii) *Direct evidence* - The prosecution examined PW3 as the sole eye-witness of the occurrence. According to his testimony, it was in his presence that the deceased was given dang blows by Mukhtiar Singh and his brothers on the exhortation of Kartar Singh, father of Mukhtiar Singh. He gave in graphic details the manner in which various injuries had been caused to the deceased. The trial court found him to be an unreliable witness and rightly so. His conduct belies his testimony. Though closely related to the deceased he did not inform about what he had seen to anyone at all except to Bhag Singh PW 4 who has in his deposition belied the statement of Kartar Singh PW 3 and stated that PW3 had not told him as to how the deceased had died. According to Kartar Singh PW3, he did not raise any alarm when injuries were being caused to the deceased and though the police station Sadiq is at a distance of 5 kms. from the village

and he besides being relative of the deceased is also the sarpanch of the village, he did not go to lodge any report. He admitted that he had not inform any lambardar or any other person in the village about the incident. During the cross-examination, he also admitted that he had not even informed the parents of Pritam Kaur about her death and did not even disclose what he had seen at the house of Kartar Singh, to his wife. Not only did he keep quiet about it on the date of the occurrence but on his own showing, even on the next day he did not convey the information to anyone till his statement came to be recorded during the inquest proceedings at the cremation ground. The trial court, rightly commented upon the unnatural behaviour of the witness and held that he had no occasion to witness the incident and his evidence was not at all reliable. We agree. evidence of Kartar Singh PW 3 does not at all inspire any confidence and we have no hesitation to rule the ocular testimony as provided by him out of consideration.

(iii) *Extra judicial confession* - Chirag Singh PW7 has been examined by the prosecution to support its version regarding the alleged extra judicial confession made by some of the appellants to him and his producing the appellants before the police. After considering his evidence in detail, the trial court opined :

"It is also thus not possible to place any reliance on the evidence of Chirag Singh PW that accused Kartar Singh and his sons Mukhtiar Singh, Ran Singh and Dhan Singh had made any extra judicial confession before him."

We are in complete agreement with the above finding of the trial court which is based on proper appreciation of the evidence on the record. In our opinion the investigating agency falsely introduced this witness to lend support to another false witness, Kartar Singh PW 3 and thereby exposed the tainted nature of investigation.

(iv) *Medical evidence* - According to PW1, Dr. Dalal, the cause of death was coma as a result of dislocation of 2nd/3rd cervical vertebra which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. The doctor then opined the possibility of the dislocation of second and third vertebrae due to lathi blow cannot ruled out, but since the body was in a burnt condition it was not possible to specify the exact type of the weapon with which the injury may have been caused. During

A the cross-examination, PW1 admitted the possibility of injuries No.1, 2 and 3 on the dead body of Pritam Kaur having been suffered in a fall from a height cannot be ruled out. At the places where injuries No.1 and 2 were located no bony injury was found. Thus, we find that the medical evidence is neither decisive nor conclusive and it fails to connect the appellants with the crime and does not go against the defence version of the deceased having died instantaneously as a result of the fall. The absence of any bony injury is more consistent with the defence version than the prosecution case.

(v) *Conduct of the appellants* - According to the prosecution, the conduct of the appellants in (i) cremating the body in 'hot haste' without waiting for the relations of the deceased and (ii) running away from the cremation ground at the arrival of Balwant Singh PW5 and others, establishes their guilty conscience and positively connects them with the crime.

D The conduct of an accused is indeed a relevant consideration to be taken note of by the courts while considering the correctness or otherwise of the prosecution version but in this case evidence led by the prosecution to demonstrate the guilty conscience of the appellants is wholly unsatisfactory.

E The deceased had died at about 5 p.m. on 11.3.84. According to the accused, they had requested Kartar Singh PW3 to inform the parents of the deceased. Kartar Singh PW3 has of course denied that he was told to inform the parent of the deceased. Even if we believe PW3 in that behalf, it does not stand to reason that PW3, a first cousin of the deceased and sarpanch of the village, would not have sent any information to the parents of the deceased about her death. That apart, admittedly the dead body was not removed to the cremation ground till 2 p.m. on 12.3.84 i.e. till nearly twenty hours after the death, we fail to appreciate how then could the trial court hold that the cremation was conducted in 'hot haste'. The accused had apparently waited for sufficient time after the death to cremate the dead body. Had the accused any intention to cremate the body "secretly" or in "hot haste", as found by the trial court, nothing prevented them from disposing the dead body during the night intervening 11th and 12th March 1984. We are of the considered opinion that the finding of the trial court is based on surmises and conjectures and is unsustainable.

H In so far as the allegation that the appellants had run away from the

cremation ground on the arrival of PW5, PW6 and others, it also has not been established. A

Evidence of Badri Singh PW 5 and Balwant Singh PW 6 was pressed into aid to show the conduct of the appellants at the time of cremation after the arrival of the relations of the deceased. Both these witnesses stated that on the arrival of the relations at the cremation ground, the appellants ran away leaving the tractor trolley and the dead body burning on the pyre unattended. However, Kartar Singh Sarpanch PW3, who was also present at the time of cremation, state that he was present at the cremation ground on 12.3.84 and had found the appellants and many other persons present there at that time. He did not state that the appellants had run away from the place of occurrence and on the other hand deposed that the accused were taken into custody by the police from the cremation ground itself. B C

Of course, PW9 Harbhagwan Singh SI in his statement deposed that Piara Singh had been arrested on 15.3.84 and the other appellants on 18.3.84 but conceded in the light of the statement given by Kartar Singh PW 3 that the accused had been taken away by the police from the cremation ground itself completely belies the assertion of the investigating officer PW9 as well as the statements of PW 5 and PW6. The prosecution has miserably failed to establish that the appellants had run away from the cremation ground at the arrival of the relations of the deceased on the contrary it appears, as stated by the appellants themselves in their statements recorded under Section 313 Cr. P.C. that they had been arrested from the cremation ground itself and taken into custody by the investigating officer. The prosecution has thus failed to establish any incriminating conduct on the part of the appellants. D E F

In view of the above discussion, we find that the investigating agency not only attempted to introduce false eye-witness but also made crude attempts to press into aid alleged extra judicial confession made by the appellants to PW7 besides putting forward the objectionable conduct of the appellants. The investigation, in the case, in our opinion, has been tainted and that taint detracts materially from the reliability of the prosecution case as a whole. G

The prosecution evidence on the record is wholly insufficient to bring home the charge against the appellants. The trial court fell in error even H

A after noticing the serious infirmities in the prosecution evidence, to have convicted the appellants. their conviction and sentence cannot be sustained. This appeal succeeds and is allowed. The conviction and sentence of the appellants is set aside. The appellants are on bail. Their bail bonds shall stand discharged.

B B.K.M.

Appeal allowed.