

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1697 OF 2009**

SUKHPAL SINGH . . . APPELLANT(S)

VERSUS

STATE OF PUNJAB . . . RESPONDENT(S)

JUDGMENT

K.M. JOSEPH, J.

1. This appeal by special leave is directed against the judgment of the High Court dismissing the appeal filed by the appellant against his conviction under Section 302 of the

Indian Penal code (hereinafter referred to as the "IPC") and sentencing to rigorous imprisonment for life.

2. On 27/06/1993 upon discovery of an unidentified body near a canal and the case being registered and upon investigation being conducted the appellant along with another came to be charge sheeted and charged with the commission of offences under Section 302 read with Section 34 of the IPC. They were also charged with the offence under Section 201 of the IPC. Before the trial Court the prosecution examined PW1 to PW17. The appellant examined DW1 and DW2. The trial Court convicted the appellant while it acquitted the co-accused. As already noticed the High Court has affirmed the

conviction and sentence of the accused-appellant.

3. We heard Ms. Aishwarya Bhati, learned Amicus Curiae and also learned counsel for the respondent-State.

4. Learned Amicus Curiae contended before us that the case is based only on circumstantial evidence. She pointed out that there are three circumstances which were alleged against the appellant. Firstly, it is contended that the prosecution laid store by an alleged extra judicial confession made by the appellant to PW 4 but she immediately pointed out that the said extra judicial confession has not been accepted either by the trial court or by the High Court. Secondly, it is pointed out that the courts have relied upon the theory of last seen. The theory

of last seen is sought to be proved through the evidence of PW7, PW8 and PW9. Thirdly, it is pointed out that the prosecution has sought to draw support from recovery of .38 caliber gun apart from cartridges. She would submit that no reliance can be placed upon the same. Lastly, she also contended that there is absolutely no motive for the appellant to commit the murder of the deceased. In a case of circumstantial evidence, motive assumes great significance. Absence of evidence of any motive with the appellant to do away with the deceased, is fatal to the prosecution case, runs the argument.

5. Per contra, learned counsel for the State would submit that the circumstances formed a complete chain and unerringly point to the guilt of the appellant. It is further pointed out

that the van belonging to the deceased in which the accused were also seen last by the witnesses for the prosecution was recovered at the instance of the appellant. This is besides the forensic evidence available which would also establish that this is a case of the murder committed by none other than the appellant as the forensic report would show that the bullet which was recovered from the body of the deceased was fired from the gun recovered from the appellant. Recovery was of the gun and also empty cartridges besides live cartridges. An attempt is made also to establish that there was a fight between the deceased and the appellant going by the injuries noted in the post-mortem and this pointed to motive.

6. We would exclude the circumstance namely, the extra judicial confession which has not been given credence to by the courts below. We will thereafter examine firstly whether the prosecution has been able to establish the last seen theory. The case of last seen theory has been sought to be proved through the testimony of PW7, PW8 and PW9.

7. P.W.7 is the brother in law of the deceased. He has deposed that the deceased was having a taxi and on 26.6.1993 he along with the deceased was present at the taxi stand. Then both the accused came there. They asked the deceased to take them in his taxi and he left with them. No doubt, in cross examination he does say that 4 or 5 taxis in addition to their two taxis were present at the taxi stand. He is

not able to give the names of other taxi drivers or the registered numbers of their vehicles. He had a separate taxi. There is nothing vital in his cross examination which could be said to demolish his examination-in-chief.

8. P.W.8 would state that 2½ years or 3 years ago when he reached village Thandewala, he found on the canal bank the van of the deceased where both the accused were sitting in the van. He was to go to Amritsar so he stopped the van. He stated that the registration number of the van was 3332. He stated he knew the deceased and both the accused. He further stated that the deceased was not present in the van. He asked the accused as to where the deceased was as he wanted to hire his taxi, thereupon the accused told him that they had some secret work

so they did not bring the deceased with them. He would say after 6 or 7 days he learnt that dead body of the deceased was recovered. He made a statement to the police. In cross examination he also says that he did not say before the police that he stopped the van as he was to engage the van to go for holy dip at Amritsar nor did he state to the police that he was to hire the van of the deceased. No doubt there may be minor contradictions but we think that his evidence has inspired the confidence of two courts. PW9 is an employee of the co-operative Bank as a gunman. He would say that on 26/06/1993 he came on a scooter and when he reached bus adda of village Jabelwali it started raining, he stopped there. The deceased came there in his van from Muktsar side. Both the accused were sitting in the van. On seeing him

deceased brought the van near him as he was his brother-in-law. He asked him to accompany but PW9 told him that he has scooter. However, it is deposed that the appellant asked the deceased to hurry up as he was getting late. Then the van left towards Kakapura. After the rain stopped, PW9 went in the same direction and he saw the van of the deceased turning downstream of the canal water of Rajasthan Canal. In cross examination he would say that the canal was at a distance of half kilometer from Jabelwali bus stand. Bus stand Jabelwali is at a distance of 8 or 10 kilometers from Muktsar. He would say that his duty hours in the Bank is from 10.00 a.m. to 5.00 p.m. as gunman. The van of the deceased he would say came to him at the bus stand at about 9 a.m. or 10 a.m.. He was at a distance of 10 to 15 killas from Jabelwali bus

stand when it started raining. He stood at the bus stand for about 15-20 minutes. He left the bus stand on scooter 5 to 7 minutes after the van left towards Kakapura. He would say that he did not know the relation except the appellant's wife. It would be noticed that there is no suggestion in the cross examination however that he does not know the appellant or that he has never seen him before.

9. The aforesaid evidence, in our opinion, which has been believed by the trial court as well as by the High Court, can be relied upon by us to conclude that the prosecution has established that the appellant was indeed last seen with the deceased before his death and recovery of the body. The appellant admittedly was working as a police officer. The next

circumstance which has been relied upon by the courts is the recovery of his service revolver - the gun along with empty cartridges and live cartridges. The evidence of PW15- officer would show that on 09.7.1993, the appellant was arrested along with co-accused. The Maruti van belonging to the deceased was also produced and the same was taken into possession in the presence of Gurdev Singh and Head Constable Surinder Singh. He has stated that the appellant was interrogated. He disclosed that he concealed .38 bore revolver along with 3 live cartridges and 2 empty cartridges and Rs.20,000/- cash in an iron box lying in his house and same was hidden. The statement was attested by Gurdev Singh (Sarpanch) and Surinder Singh. A .38 bore revolver, 2 empty cartridges and 3 live cartridges were recovered as per the

statement from an iron box from the store of his house. The key was taken out by him from the almirah by the appellant. The revolver and cartridges were sealed after making into parcels. They were taken into possession. A seal was prepared which is handed over after use to Gurdev Singh. It is also established from the statement of PW15, the investigating officer that after the post-mortem, a bullet was produced before him. No doubt, the bullet was recovered at the time of post-mortem on 26.7.1993. The revolver was recovered on 11.7.1993. In cross examination P.W.15 has spoken about sending the revolver and bullet for forensic examination. The report of the Forensic Science Laboratory is to the effect that the bullet which was marked as B1 has been fired from .38 bore revolver No.673. This

undoubtedly would establish that the bullet which resulted in the death of the deceased came from the revolver which was issued to the appellant.

10. Learned counsel for the appellant in the light of this clearly incriminating circumstance drew our attention to the following statement given by the appellant in his statement under Section 313 Cr.P.C.

"I am innocent. I have been falsely implicated. I was suspended by S.S.P. Faridkot on 3.5.1993 and was sent to Police Lines, Faridkot, where I remained present in the months of May and June 1993 throughout. In May I deposited my revolver and ammunition, because of my suspension, in Police Lines, Faridkot. On 28.6.1993 vide report No.3 in the Daily Diary I was detailed on duty to go to the office of D.S.P. Moga, regarding departmental enquiry. When I returned

in the evening, police of P.S. Sadar Muktsar took me from the Police Lines. They also collected my revolver and ammunition from the officials of the Police Lines, Faridkot. I was detained for some days in illegal custody and my formal arrest was shown thereafter and recovery of revolver and ammunition was foisted against me. Revolver after firing in the police station was sent to Forensic Science Laboratory. Bullet was also foisted against me."

11. Apparently the version that is sought to be set up is that the appellant was under suspension, and therefore the appellant had surrendered his revolver and therefore the case of the recovery of the gun and that the fatal shot was fired from the gun should not be believed.

12. There appears to be no evidence to show however that the appellant was actually placed

under suspension as is sought to be claimed by him in the questioning under Section 313. The appellant has also not been able to draw our attention to any evidence adduced by him to establish that he was in fact placed under suspension so as to prove that he had surrendered the gun at the police station prior to the date of the incident. It may be true that the investigating officer when questioned has stated that he does not know whether the officer was suspended. However, this was the state of the prosecution evidence. It was thereupon incumbent upon the appellant to establish the case through evidence which would certainly have been available had indeed been placed under suspension. In the absence of material to establish the case of suspension we are not inclined to disturb the concurrent

findings by the court which is based on evidence which establishes that there was a recovery of the gun along with 2 empty cartridges and 3 live cartridges on the statement given by the appellant. Furthermore, as already noticed, the evidence establishes that the bullet found in the body of the deceased was fired from the gun which is allotted to the appellant. That apart we have already found that there is ample evidence to show that the appellant was last seen with the deceased, again, a fact which is established on the basis of testimony of witnesses who have been found to be creditworthy by two courts. In an appeal maintained under leave under Section 136 this Court would not ordinarily go into the credibility of the witnesses whose testimony has inspired the confidence of the courts.

13. The evidence of three witnesses relating to last seen has been relied upon by two courts. It may be true that there may be certain minor contradictions. The credibility of witnesses is ordinarily not re-visited by this Court in an appeal by special leave. That apart the circumstance as to the recovery and what is most important the report of the forensic laboratory is clinching. The report of the forensic laboratory reads as follows:

"One point .38 inch jacketed bullet marked B/1 contained in parcel 'A' has been fired from .38 inch revolver No.A-673."

14. We are not inclined to place any reliance on appellant's version that the gun was actually surrendered by him and making use of the gun, a shot was fired and he has been implicated

particularly as he has not proved that he has been placed under suspension. Furthermore, in fact, P.W.15 has denied the allegation that the bullet was sent after firing. The only inevitable conclusion we can reach is that the gun was recovered from him and the bullet which has been found to have caused the fatal injury to the deceased and which was recovered from the body of the deceased has been fired from the appellant's gun.

15. The last submission which we are called upon to deal with is that there is no motive established against the appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial

evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the court by way of circumstantial evidence be fatal to the prosecution. In such circumstances, on account of the circumstances which stand established by

evidence as discussed above, we find no merit in the appeal and same shall stand dismissed.

.....J.
(A.M. Khanwilkar)

.....J.
(K.M. Joseph)

New Delhi;
February 12, 2019