

Before Uma Nath Singh & A. N. Jindal, JJ.

GURPAL SINGH, *ALIAS* PALA—*Appellant*

Versus

STATE OF PUNJAB—*Respondent*

Criminal Appeal No. 981/DB of 2002

28th May, 2007

Indian, Penal Code, 1860—Ss. 302 & 364—Blind murder of a taxi driver—FIR against appellants on the basis of suspicion—Prosecution failing to connect recoveries with crime allegedly made from appellants—No sufficient evidence led by prosecution to prove case—Prosecution failing to prove guilt of appellants beyond reasonable doubt—Appeals accepted, appellants ordered to be released forthwith.

Held, that the prosecution has failed to connect the alleged recoveries of Tata Sumo, locket, purse and RC from the accused. No other sufficient evidence has been led by the prosecution to connect the accused with the crime. Therefore, we differ with the findings returned by the Trial Court and are constrained to hold that the Trial Court was moved by the assumptions and presumptions without basis thereof. The complete evidence and the circumstances were not rightly taken into consideration. Therefore, the impugned judgment warrants interference at our end.

(Para 16 & 18)

Further held, that the chain of circumstances as brought to surface in order to prove the case is very weak and incomplete. The evidence so led is hardly sufficient to connect the accused with the crime. Consequently, we hereby accept the appeals, set aside the impugned judgment and acquit the accused persons.

(Para 19)

Kanwaljit. Singh, *Advocate for the appellant.*

Reeta Kohli, Additional Advocate General, Punjab for respondent— State of Punjab.

A. N. JINDAL, J.

(1) Assailed in four Criminal Appeals Nos. 981-DB of 2002, 106-DB of 2003, 125-DB of 2004 and 470-DB of 2006, is the judgment dated 4th December, 2002 passed by Additional Sessions Judge (*ad hoc*), Fast Track Court, Hoshiarpur,—*vide* which all the four accused—appellants, namely Bhupinder Singh *alias* Bhinda, Ajit Singh, Guralp Singh *alias* Pala and Rajveer *alias* Raju Bhaiya, were convicted under Sections 302 and 364 of the Indian Penal Code and were sentenced to undergo punishment as under :—

U/s 302 IPC.—Imprisonment for life and to pay a fine of Rs. 1,000 each, in default of payment of fine, to undergo further rigorous imprisonment for one month, each.

U/s 364 IPC.—Rigorous imprisonment for ten years and to pay a fine of Rs. 1,000 in default of payment of fine, to undergo further rigorous imprisonment for one month, each.

(2) Sikander Singh (hereinafter referred to as the complainant) is the taxi owner of Tata Sumo No. PB-10-5786 and deceased Jaswinder Singh Tikka was the driver on the said Tata Sumo. The complainant disclosed before the police that on 1st August, 2000 at 2.30 p.m., Jaswinder Singh came to him and sought his consent to go to temple of Bala Balaknath with some person belonging to village Singhpur, who was to hire the said Tata Sumo. He was permitted. Jaswinder Singh did not turn up. He further alleged that on 3rd August, 2000, Gian Singh told him that his taxi was hired by the accused persons on 1st August, 2000. Therefore, he lodged the First Information Report on 4th August, 2000 against aforementioned all the four accused regarding the abduction of Jaswinder Singh along with Tata Sumo bearing Reg. No. PB-10-5786.

(3) During the investigation on 6th August, 2000, Sub Inspector Raminder Singh received information regarding the fact that the aforesaid Tata Sumo was lying parked behind a restaurant near Dusarka in the area of Gardhiwala and the accused were taking food at the restaurant. Consequently, he raided the premises, recovered the Tata Sumo and arrested the accused.

(4) During interrogation, accused Bhupinder Singh got recovered a locket from his residential house at village Abadgarh, and then in pursuance of his disclosure statement made under Section 27 of the Indian Evidence Act. Accused Ajit Singh also got recovered one purse containing the photograph of Jaswinder Singh. Similarly, Rajveer also got recovered RC of the Tata Sumo in the name of Sikander Singh from room of the house of Buta Singh.

(5) The dead body of Jaswinder Singh was recovered by the Himachal Pradesh Police on 2nd August, 2000 (as body of unknown person) from the area of Una. Dr. Umesh Gautam conducted the autopsy on the dead body on 2nd August, 2000 at 4.40 p.m., as body of some unknown person. The doctor found as many as seven injuries on the person of deceased and opined that the cause of death of that person was on account of asphyxia due to strangulation. During investigation, it was also revealed that accused had purchased liquor from the shop of Ranjit Singh, PW5 at Jharera Road, Una ; Dina Nath PW4 disclosed that accused came at his restaurant in the said Tata Sumo. Gian Singh PW10 stated that he travelled from Dasuya to Hoshiarpur in the said Tata Sumo owned by the complainant and hired by the accused from Dasuya for Baba Balak Nath Nath Mandir. He had seen the accused with the deceased in the said Tata Sumo.

(6) On completion of the investigation, the challan against the accused was presented in the court. All the accused were charge-sheeted under Sections 364 and 302 IPC, to which they pleaded not guilty and claimed trial.

(7) In evidence, the prosecution examined Sham Lal PW1, Sunil Kumar PW2, Raj Kumar Photographer PW3, Dina Nath PW4, Ranjit Singh, PW5, Amarjit Singh PW6, Joginder Singh PW7, Sikander Singh PW8, Dr. Umesh Gautam PW9, Gian Singh, PW10, Assistant Sub-Inspector Rajinder Singh, PW11, Sub-Inspector Raminder Singh PW-12 and Rattan Singh PW13.

8) On scrutiny, the trial ended in conviction. Hence, this appeal.

(9) We have heard learned counsel for the appellants and Additional Advocate General appearing for the respondent — State of Punjab and have also gone through the record very carefully.

(10) There is no denying a fact that it is blind murder case. The accused are alleged to have hired the taxi on 1st August, 2000. Dead body of the deceased was recovered in the area of Una in the State of Himachal Pardesh on 2nd August, 2000. The FIR was lodged under section 364 IPC by the complainant on the basis of suspicion against the accused on 4th August, 2000, because by the time it was not known that Jaswinder Singh was murdered. The accused were arrested on 6th August, 2000 and recovery of purse, locket and RC of Tata Sumo was effected from the accused on 9th August, 2000. It is well-settled by now that suspicion, however, grave may be, cannot take place of proof. The prosecution has to prove the complete chain of circumstances as to leave nothing to suggest that it was none else, but the accused who committed the crime. The circumstances should be consistent with the guilt of the accused and inconsistent with his innocence. While re-appreciating the entire evidence on the record, it transpires that the prosecution in this case has not been able to prove the guilt of the accused beyond reasonable doubt, while putting the same on the preponderance of probabilities. The prosecution in order to seek the conviction of the accused has sought the help of following pieces of circumstantial evidence :—

- (i) The theory of last seen by : Ranjit Singh PW5, a salesman of the liquor vend, Jharera Road, Una, from where the liquor was purchased by the accused; Gian Singh PW10 who had travelled with the accused and had seen the deceased in their company; Dina Nath PW4 on whose restaurant the accused and the deceased had taken meals and drinks; and Sham Lal PW1 at whose tea-stall the accused had purchased Pepsi;
- (ii) The fact regarding hiring of Taxi by the accused allegedly has been proved by the complainant and Amarjit Singh PW6;
- (iii) The recovery of locket (worn by the deceased) from accused Bhupinder Singh, purse containing his photograph from accused Ajit Singh, RC of the Tata Sumo from accused Rajveer Singh and the recovery of Tata Sumo bearing No. PB-10-5786 from the possession of the accused;

(11) Now, if we peep into the evidence, led in order to prove the aforesaid circumstances, then it transpires that the prosecution has failed to prove any of them.

(12) As regards the first circumstance, it may be mentioned that the complainant (Sikander singh PW8, who admittedly is the owner of the Tata Sumo, got recorded in the First Information Report dated 4th August, 2000 that the deceased had informed him on 1st August, 2000 at 1.30/2.00 p.m. that one person had come to engage the Tata Sumo for going to Baba Balaknath Mandir and then on 3rd August, 2000 Gian Singh PW10 came and told him that he had seen the deceased in the company of the accused as they had travelled by said Tata Sumo, yet while appearing in the witness box, he deviated from the facts as got recorded in the FIR and disclosed that some of his friends wanted to take him to the temple of Baba Balaknath and he allowed him to take the vehicle. Gian Singh met him and told him that he boarded his Tata Sumo and alighted at Hoshiarpur. He did not mention in his substantive statement if the taxi was hired by one person, but has stated that some of his friends wanted to take the Tata Sumo. He also did not mention if Gian Singh had disclosed about having seen the deceased in the company of the accused in the Tata Sumo. The other witness examined by the prosecution in order to prove the taking of the Tata Suma is Amarjit Singh PW6, Secretary, Taxi Union, Dasua. He also did not support the prosecution case. He has stated only that the vehicle was to go to Baba Balaknath Mandir on 1st August, 2000 and was to return on 2nd August, 2000. He does not say if the accused had hired the taxi of the deceased or he had ever seen the accused in the Taxi Union Premises on that day. Thus, the fact with regard to the hiring of the taxi by the accused and their travelling to the Baba Balaknath Mandir cannot be said to have been established.

(13) Now coming to the next circumstance, first of all, the prosecution examined Sham Lal PW1, in order to establish that he had seen the deceased with the accused when they had come in the evening on 1st August, 2000 to purchase Pepsi from his shop. While not supporting this fact, he testified that he cannot say whether any of the accused purchased Pepsi from him. Next, the prosecution has tried to take shelter of the testimony of Dina Nath PW4 on the premises that the accused and deceased had visited his restaurant on 1st August, 2000 and after taking meals, they had started for Baba Balaknath Mandir. He has also not supported the prosecution version and has stated that five persons came to his restaurant for taking meals and after meals when they started for Baba Balaknath

Mandir, the requested them to take him to his village Ninani. They gave him ride and dropped him at his village, but he refused to identify if these were the accused who had given him the ride. He has also not mentioned the number of the Tata Sumo, on which he had taken the ride. Similarly, Ranjit Singh (PW5) refused to support the prosecution case. He stated that the accused never came to his liquor vend to purchase the liquor. It has been vehemently contended that from the FIR, it is established that Gian Singh PW10 had informed the complainant that he had travelled by the Tata Sumo of Sikander Singh and during that time he had seen deceased in the company of the accused. Though Gian Singh may not have proved this fact during his statement, yet the same cannot be excluded by terming it as hear-say evidence. In this connection, the Senior Deputy Advocate General has referred us the decision of the Supreme Court of India **Vasa Chandrasekhar Rao versus Ponna Satyanarayana**, (1) wherein, it was observed as under :-

“...the father of the accused PW21 accompanied by PW9, reached the house of the accused and found the deceased lying dead with stab wounds. PW22, who is a neighbour of the accused, deposed in Court that on the date of occurrence at 4.30 p.m., he heard some cries from the house of PW1 and when he rushed to the place, he saw the accused coming out of the house with blood-stained clothes and on being questioned, the accused confessed that he himself has murdered his wife and daughter.”

(14) In the circumstances, the Apex court observed that,

“statement of PW21 would be in the nature of an hearsay but Section 6 of the Evidence Act is an exception to the aforesaid hearsay rule and admits of certain carefully safeguarded and limited exceptions and makes the statement admissible when such statements are proved to form a part of the *res gestae*, to form a particular statement as a part of the same transaction or with the incident or soon thereafter, so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. In absence of a finding as

to whether the information by PW1 to PW21 that accused has killed the deceased, was either of the time of commission of the crime or immediately thereafter, so as to form the same transaction, such utterances by PW1 cannot be considered as relevant under Section 6 of the Evidence Act. In this state of affairs, it may not be proper to accept that part of the statement of PW21 and the said circumstance cannot be held to have been established. But even excluding such circumstance, if all other circumstances enumerated above are taken into considering, which must be held to have been proved beyond reasonable doubt, the conclusion is irresistible that all these circumstances point towards the guilt of the accused.....”

(15) Having examined the aforesaid judgment, we are of the view that the statement made by Gian Singh PW10 is not immediately after the incident or it does not form the part of the same transaction as he after coming to the complainant after two days, allegedly disclosed this fact. Nevertheless, this fact is not an established fact at all as neither the complainant has disclosed in his substantive statement that Gian Singh disclosed him about his (deceased's) travelling with the accused, nor Gian Singh has stated in his substantive statement that he had travelled with the accused on 1st August, 2000. In his substantive statement, the complainant only says that Jaswinder Singh (deceased) told him that he had to go in Tata Sumo to Baba Balaknath Mandir. The deceased was the driver of the Tata Sumo. Neither Gian Singh nor the complainant categorically state that the accused accompanied Jaswinder Singh to Baba Balaknath Mandir. All this proves the untrustworthiness of the statements of Gian Singh (PW10) and the complainant.

(16) Now coming to the recoveries, the prosecution has failed to connect the alleged recoveries of Tata Sumo, locket, purse and RC from the accused. The argument that the recovery of Tata Sumo from all the accused is sufficient to connect the accused with the crime, to our mind is unsustainable. the recovery of the Tata Sumo has been proved by Assistant Sub Inspector Rajinder Singh PW11, Joginder Singh PW7 and Sub Inspector Raminder Singh PW12. It is an admitted case of the prosecution that Tata Sumo was recovered when it was lying parked behind the restaurant, whereas, the accused were arrested from the restaurant, situated at village

Garhdiwala. Admittedly, no document relating to Tata Sumo was recovered from the accused at the time of effecting its recovery. The accused were not travelling in the Tata Sumo, when it is alleged to have been recovered from them. The restaurant owner examined in order to prove if the accused actually took meals at his restaurant or that the Tata Sumo was parked by the accused before taking meals and recovery thereof was effected in his presence, has not supported the prosecution case and identified the accused. There is no reason to believe that after killing the driver, the accused would continue to carry the Tata Sumo for five days, when their motive was only to rob the driver of the said vehicle and sell the same. No document, much less RC of the said vehicle was recovered from the Tata Sumo. It is not known as to why the accused would take the risk of travelling by a vehicle, without any documents as it is well-known that driving a vehicle without documents would invite trouble. Even no customer from Dhaba was joined at the time of effecting recovery or to prove that these were the accused, who had parked the Tata Sumo on the backside of the restaurant. As such, we are afraid to hold if the recovery of the Tata Sumo was effected from the accused.

(17) Now coming to the recovery of locket from accused Bhupinder Singh, it may be mentioned that no witness except Joginder Singh PW7, who is related to the deceased, had been joined at the time of effecting the recovery. Locket is too small a thing that an accused would conceal. He was not going to be substantially benefitted by selling this silver locket. Had they really wanted to make money, then could sell the Tata Sumo and the silver locket was a very petty article. No neighbour of the house, from where the locket had been recovered ; was joined at the time of effecting recovery. Similarly, as regards recovery of purse from accused Ajit Singh, the place from where this purse was recovered was open and accessible to all. Statement Ex. PG does not disclose as to where the accused had concealed this purse. It would also be pertinent to mention here that there is no evidence on record that Jaswinder Singh (deceased) was carrying purse at the time when he was murdered. The story of the purse containing photograph does not find mention in the statement of accused Ajit Singh. As regards the recovery of RC of Tata Sumo bearing No. PB-10-5786,

it may be mentioned that the recovery was not effected from Rajveer Singh's own house or the place, in his possession. It has come in evidence that some lady was occupying the house when the recovery was effected. Therefore, the house cannot be said to be in sole possession of accused Ajit Singh. It would also be significant that in all the three statements under Section 27 of the Evidence Act, Ex. PF, PG and PH and the recovery memos Ex. PF/1. PG/1 and PH/1, only Joginder Singh PW7 (a relative witness) has been cited to attest the recoveries of the aforesaid Articles and no independent witness has been joined. Much less, Joginder Singh while appearing in the witness-box refused to identify the locket which was shown to him and has stated that he cannot say that if the said locket was recovered from Ajit Singh or not. In any case, without proving the identity of the locket and purse, it cannot be said to be established that these related to the deceased. Consequently, the evidence with regard to the recovery of the locket, purse and the RC from the three accused, namely ; Bhupinder Singh, Ajit Singh and Rajveer Singh, respectively, stand vitiated.

(18) No other sufficient evidence has been led by the prosecution to connect the accused with the crime. Therefore, we differ with the findings returned by the Trial Court and are constrained to hold that the Trial Court was moved by the assumptions and presumptions without basis thereof. The complete evidence and the circumstances were not rightly taken into consideration. Therefore, the impugned judgment warrants interference at our end.

(19) In view of the above discussion, we are of the definite opinion that the chain of circumstances, as brought to surface in order to prove the case is very weak and incomplete. The evidence so led is hardly sufficient to connect the accused with the crime. Consequently, we hereby accept the appeals set aside the impugned judgment and acquit the accused persons.

(20) They are directed to be set at liberty forthwith.

R.N.R