

SEWA KAUR
v.
STATE OF PUNJAB

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NOVEMBER 7, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

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Indian Penal Code, 1860 :

Ss. 302/34 and 201/34—Murder—Appellant-wife, alongwith her paramour, committed murder of her husband, an army personnel—She told her relatives and co-villagers that her husband had gone back to his unit— Later, when enquiries were made by the Army about the where-abouts of the deceased an F.I.R. was lodged by the mother of the deceased—Both the accused made extra judicial confessions; and also disclosed to the police the place where they burried the dead body—Both the accused were prosecuted u/s 302 and s. 201 I.P.C.—Trial Court, considering the eyewitness account given by the son of the appellant and the deceased, the extra-judicial confession made by the accused, the medical evidence and other circumstances like the deceased having been last seen with the appellant, convicted the appellant and the co-accused under ss. 302 and 201 IPC and sentenced them accordingly—High Court upheld the conviction and sentence—Held, the appellant and her co-accused were charged specifically with having shared the common intention of causing murder of the deceased, though each one of them was charged for the substantive offence u/ss. 302 and 201—In the established facts and circumstances, it would be appropriate to convict the appellant for offences u/ss. 302/34 and 201/34 and maintain the sentence as imposed by trial court and upheld by the High Court.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1144 of 1995.

From the Judgment and Order dated 20.1.93 of the Punjab and Haryana High Court in CrI. A. No. 5-DB of 1991.

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K.G. Bhagat, Kamal Baid and Debasis Mishra for the Appellant.

Sudhir Walia and R.S. Suri for the Respondent.

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A The following Order of the Court was delivered:

This appeal by special leave is directed against the judgment and order of the High Court dated 20.1.1993 upholding the conviction and sentence recorded by the trial court on 5.11.1990 against the appellant and her co-accused Bakhshish Singh for offences under Section 302 and 201

B IPC.

The deceased Havaladar Gurdev Singh was the husband of the appellant. He was serving in 4 J & K Rifles. The co-accused of the appellant Bakhshish Singh was living in the neighbourhood of the appellant in the village. He developed illicit relations with Sewa Kaur, appellant. According to Swaran Kaur, PW8-mother of the deceased, in the year 1986, the appellant eloped with Bakhshish Singh and had remained out of the village for about one and a half months. On the matter being reported to the police, the SHO of police station Hariana apprehended both of them and the appellant was handed over to the village panchayat on assurance that she would behave better. Gurdev Singh deceased came to the village on annual leave in April, 1989. On 15.4.1989, Gurdev Singh had gone to his friend Dial Singh at Jattan Da Kotha and returned at about 9.00 p.m. after taking his meals and liquor. Reaching back his house, he rebuked his wife Sewa Kaur, the appellant herein for the illicit relations she was having with Bakhshish Singh, her co-accused. A quarrel ensued and it is alleged that while the appellant took the deceased in her grip, squeezing his testicles, Bakhshish Singh, her co-accused who came to that room, bolted it from inside and gave a danda blow on the head of the deceased as a result of which he fell down. Ranjit Singh Rana, PW9 son of the appellant and the deceased saw his father being assaulted and raised an alarm. He was threatened by co-accused Bakhshish Singh and also given a daang blow which hit PW9 on his nose. PW9 was detailed in another room. The appellant and Bakhshish Singh finding Gurdev Singh to have died, put the dead body in a gunny bag and removed it on a bicycle towards the village pond. PW9 saw the appellant and Bakhshish Singh removing the dead body from the window of the room where he was detained. He saw the appellant was also carrying with her a kasi. Both the appellant and her co-accused returned to the house after about one and a half hours and the co-accused of the appellant washed the blood stains from the wall and also cleaned the floor to remove traces of blood. While the walls were white washed, cow dung mixed with water was used to plaster the floor. Ranjit Singh PW9 was threatened with death by Bakhshish Singh in case he

made any disclosure to anybody of what he had seen. On the next day, Dial Singh, friend of deceased Gurdev Singh came to the house of Gurdev Singh and on enquiry from the appellant was told that the deceased had gone to his house in village after giving beating to her. Later on also when some of the villagers and others made enquiries about Gurdev Singh, the appellant told them that after giving beating to her, he had returned to his unit. The matter rested thus. Since, Gurdev Singh did not report back for duty, enquiries were made by his unit by writing letters about his whereabouts. He was declared a deserter and a search for him started. It was at that point of time that suspicion arose regarding the whereabouts of Gurdev Singh who had been last seen alive on 15.4.1989 with the appellant. Swaran Kaur, PW8--mother of the deceased made a written report to the Senior Superintendent of Police, Hoshiarpur after having failed to get any help from the local police to trace out her son. She expressed doubts about the complicity of the appellant, her paramour Bakhshish Singh and Paro, mother of Bakhshish Singh on the disappearance of her son. It was on the basis of that written report that an FIR came to the registered and investigation was taken in hand. The needle of suspicion pointed towards the appellant Bakhshish Singh. They were repeatedly interrogated. Subsequently, both the appellant and Bakhshish Singh went to Jagjit Singh, PW10 and made an extra judicial confession to him regarding the murder of Gurdev Singh and requested him to make them surrender before the police, in view of his good relations with the police. PW10 asked them to come to him later on. Ultimately, PW10 took both the appellant and Bakhshish Singh to police station but on the way, near the Octroi post, when he met the police officials, he handed over the two accused to them on 2.11.1989. After the appellant and Bakhshish Singh were taken into custody by the police, they were again interrogated. Each one of them made a disclosure statement (Ex.P.22 and Ex.P.23) to the effect that they could point out the place where the dead body of Gurdev Singh had been buried by them. The accused then led the police party to the Choe (rivulet) and pointed out the place where the dead body of Gurdev Singh was stated to be buried. After removing the earth, dead body of Gurdev Singh was recovered from that place in a decomposed state. After preparation of the inquest report the dead body was sent for post mortem examination. The dead body was in a highly decomposed state and the skeleton was sent for examination by Dr. Jagdish Gargi, Professor and Head of the Department of Forensic Medicine. The dead body was identified to be that of Gurdev Singh and on completion of the investigation, both the appellant and Bakhshish Singh were sent up for trial and convicted and sentenced, as noticed above.

- A Both the trial court and the High Court considered the evidence of PW9 Ranjit Singh Rana, the sole eye-witness. Both the courts critically analysed his statement and found his testimony to be consistent, cogent and trustworthy. The courts below also considered the evidence of Swaran Kaur, PW8 and the extra judicial confession made by the appellant and Bakhshish Singh before Jagjit Singh, PW10, besides the medical evidence
- B furnished by Dr. Devinder Singh, Dr. Jagdish Gargi and Dr. Sulakshna Kakkar. Ranjit Singh Rana, PW9 who was given a dang blow by Bakhshish Singh when he raised an alarm seeing his father being assaulted had also been medically examined and the injury on the nose corroborated the testimony given by him. On the basis of this evidence and other
- C circumstances like the deceased having been seen last alive with the appellant and the false information given by the appellant to the villagers that the deceased had gone back to his unit, both the courts found the case against the appellant and her co-accused Bakhshish Singh to have been established beyond a reasonable doubt and consequently the appellant and her co-accused were convicted and sentenced.
- D Learned counsel for the appellant submitted that the statement of Ranjit Singh Rana, PW9-the sole eye-witness could not be relied upon as he had admitted that having seen his mother having sexual intercourse with her co-accused Bakhshish Singh on one occasion, he had become angry and wanted to take revenge against the appellant and Bakhshish Singh and therefore could have falsely implicated them. We do not find
- E any merit in this submission. As a matter of fact, the statement of PW9 shows that it is a statement given by a truthful witness in a straight forward manner. The statement on the basis of which learned counsel wants us to disbelieve PW9, as a matter of fact, lends credence to his testimony as that would be the natural and normal reaction of any son who finds his mother
- F in a compromising position with a person other than his father. Despite lengthy cross examination, nothing has been brought out which may in any way cast a doubt about his reliability. He has stood the test of cross examination well. His evidence has received ample corroboration from the recovery of the dead body on the disclosure statements made by the appellant and her co-accused, at their pointing out from near the choe.
- G The statement of PW10 Jagjit Singh and PW8 Swaran Kaur have lent further corroboration to his testimony and nothing has been pointed out to us which may render their evidence untrustworthy. Besides, we also find that the appellant kept on giving false information regarding the whereabouts of her husband to the co-villagers and the relations by stating that he had returned to his unit and this effort apparently was to conceal true facts.
- H The medical evidence on the record shows that the deceased had suffered

head injuries about seven months prior to the examination of the highly decomposed body by the doctors and that evidence also lends credence to the testimony of PW9. The fracture of the right temporal bone and parietal bone could have led to the instantaneous death of the deceased and the deposition of PW9 that his father died instantaneously and the appellant—his own mother and her paramour Bakhshish Singh—co-accused put the dead body in a gunny bag and took it on a cycle towards the village pond, has received corroboration from the recovery of the dead body at their pointing out. After giving our thoughtful consideration to the entire material on the record and the circumstantial evidence, we are satisfied that the prosecution has established the case against the appellant and her paramour Bakhshish Singh (no SLP has been filed by him) beyond a reasonable doubt. We are not persuaded to take a view different from the one taken by the trial court and the High Court as regards the guilt of the appellant.

From a perusal of the chargesheet, we find that the appellant and her co-accused were charged specifically with having shared the common intention of causing the murder of Gurdev Singh though each one of them was charged for the substantive offence under Section 302 and 201 IPC. In the established facts and circumstances of the case, it appears appropriate to us to convict the appellant for an offence under Section 302/34 IPC as well as for the offence under Section 201/34 IPC and maintain the sentence, as imposed by the trial court and upheld by the High Court on both the counts. We are satisfied that no prejudice can be said to have been caused to the appellant by invoking the aid of Section 34 IPC.

The appeal, consequently, fails and is hereby dismissed.

R.P.

Appeal dismissed.