

Gian Chand and ors. Vs. State

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Court : Delhi

Decided On : Feb-22-1994

Reported in : 1994IAD(Delhi)1095; 54(1994)DLT20; 1994(29)DRJ27

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 201

Appeal No. : Criminal Revision Appeal No. 131 of 1992 and Criminal Miscellaneous Appeal No. 222 of 1992

Appellant : Gian Chand and ors.

Respondent : State

Advocate for Pet/Ap. : R.K. Naseem,; Neelam Grover and; A.K. Singh, Advs

Judgement :

Jaspal Singh, J.

(1) Four persons namely. Sukhpal @ Satpal. Bhagwat Braham Singh and Gian Chand have been charged under Section 120-B and under Sections 364, 302 and 201 all read with section 120B of the Indian Penal Code. One of them namely. Bhagwat has also been charged exclusively under Section 364 of the Indian Penal Code. Though all the persons named above are petitioners before me, at the lime of arguments, the petition was pressed only on behalf of Braham Singh and Gian

Chand.

(2) Briefly stated the case of the prosecution is that there was some improper transaction between the deceased Rajbir Singh and Bhagwat and that on July 27, 1990 it was Bhagwat petitioner who had abducted him in order that he might be murdered. It was only thereafter that Rajbir's dead body was recovered. It is also the case of the prosecution that all the petitioners before me had made an effort to dispose of the body of the deceased at a Pushia.

(3) Unfortunately, the family of the deceased was not satisfied with the investigation conducted and consequently filed a criminal complaint in which some witnesses were examined. However, in the meanwhile, investigation was completed and challan was filed against all the present petitioners.

(4) Entire evidence recorded in the complaint as well as collected during investigation has been read out to me. The only evidence with regard to Braham Singh is that he was amongst the four persons who had thrown the body of the deceased at the Pushta. There is absolutely no other evidence against him excepting, of course, the fact that he was not found available at his house and was arrested after about a month of the occurrence. This being the position I do feel that charge under Section 120B or under Section 364 read with Section 120B or for that matter under Section 302 read with section 120B could not be framed against Braham Singh since there is absolutely no material on record to show that he was a party to any conspiracy to commit murder of the deceased or to his abduction. To that extent the charges as against him would not stand and are consequently quashed.

(5) Coming to Gian Chand, it is contended by the learned counsel for the petitioners that the only evidence against him is in the nature of an alleged extra-judicial confession made by Bhagwat before Smt. Vidya Wati, widow of the deceased. This extra-judicial confession was allegedly made on 27th of July, 1990 and it is to the effect that he along with Sukhpal and Gian Chand had done away with the deceased. It is argued that no charge could be framed against Gian Chand on the basis of this extra-judicial confession alone and in support my attention has been drawn to a judgment of Bombay High Court in Rashid Gafoor

Parkar v. State of Maharashtra (Bombay): 1985 (1) RCR 186 which, of course, docs go to show that charge cannot be framed on the basis of an extra judicial confession of a co-accused alone. However, what distinguishes the judgment of Bombay High Court is the fact that in the present case extra-judicial confession of a co-accused is not the only piece of evidence. We have on the record not only the said extra-judicial confession but also the statement of CW3 Chander Pal which shows that on 27th of July. 1990 at about 3/3.15 P.M. he had seen the deceased with Sukhpal Singh, Gian. Bhagwat. Rajbir Singh and one more person while standing near a silver coloured Maruti Car and that on enquiry, the deceased had told him that they were going to inspect some land near NOIDA. It is also in his statement that thereafter all of them had left that place together in the said Maruti Car towards Ghaziabad. Thus the deceased was allegedly last seen with the said petitioners and in a vehicle which was later to be used for disposing of the dead body.

(6) Section 30 of the Evidence Act provides, that a confession may be taken into consideration not only against its maker, but also against a co-accused. True. it does not come within the definition of 'evidence' as defined by section 3 of the Act but then it positively is an element which the Court may take note of and therefore, may be treated as evidence though in a general way. Thus to say that the extra-judicial confession cannot be considered against any such person at all would not be correct. Of course, what weight should be attached to it is a separate matter, for, it falls within the realm of judicial discretion and. surely this would be no stage to ponder or pontify on the same though, it may be said. that it can only be used to 'lend assurance to other evidence against a co-accused'. (Per Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerburty, 38 Cal 559)

(7) In the present case the extra-judicial confession of the co-accused, taken in conjunction with the statement of Chander Pal, as referred to above, does go to show that it is not a case where there was absolutely no evidence before the court for the purpose of framing of charge. it need hardly be mentioned that at the stage of framing of charge the judge is not to meticulously examine the truth, veracity and effect of the evidence which the prosecution may propose to adduce. It is also no stage to weigh the probable defense which the accused may choose to take.

The court all his stage is also not obliged to consider whether the facts, if proved, would be incompatible with the innocence of the accused or not. It is true that strong suspicion against the accused may not take the place of proof of his guilt at the conclusion of the trial but at the initial stage the presence of strong suspicion leading the court to think that there is ground for presuming that the offence has been committed by the accused, would be taken to be sufficient to proceed against him. This being the position in law. as far as Gian Chand accused is concerned. I find no merit in the petition excepting, of course, on one charge and that is under section 201. There is absolutely no material on record to justify the framing of the charge against him under that provision either alone or in conjunction with section 120B. To that extent the petition as far as it relates to him, is allowed.

(8) Nothing said in this order shall be read as an expression of opinion on the merits of the case.

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