

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.D-438-DB of 2008

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Date of decision:31.7.2012

Ishwar Kumar and another

...Appellants

v.

State of Haryana

...Respondent

....

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Ms. Tanu Bedi, Advocate, Amicus Curiae for the appellants.

Mr. R.K.S. Brar, Additional Advocate General, Haryana for the
respondent-State.

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Inderjit Singh, J.

Appellants-Ishwar Kumar and Rohit have filed this appeal, who are aggrieved against the judgment and order dated 5.5.2008 passed by the learned Additional Sessions Judge, Sonapat vide which they have been held guilty for offences under Sections 302 and 201 read with Section 34 of the Indian Penal Code ('IPC' - for short) and sentenced to undergo imprisonment for life and to pay a fine of ₹10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two years for the offence under Section 302 read with Section 34 IPC. They have been further sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/- each and in default of payment of fine to

further undergo rigorous imprisonment for six months for the offence under Section 201 read with Section 34 IPC. However, both the substantive sentences have been ordered to run concurrently.

The brief facts of the prosecution case are that the FIR (Ex.PD) was registered on the statement of Rakesh got recorded to SI Virender Singh (PW-10), who has stated that on 12.2.2007 at about 7.30 a.m., Chand son of Mukhtiare, resident of Ladrawan, Brick Kiln Contractor told him that he saw a dead body lying face downward near 'Rajwaha', when he was going to the shop. Blood had oozed out of the dead body. On identification, he found the dead body of Maha Singh father of the complainant. Maha Singh was running a retail shop in field kudhiyawala for the last about two years. People residing in the area and 'pathers' (brick makers) used to purchase goods. The complainant also stated that his father used to reside at the shop and also used to sleep in the shop itself. On receiving the information, the complainant and his uncle Rajbir reached near the shop at 'Rajwaha'. Injury was noticed on the forehead of his father and blood had come out. The deceased was lying face downward in the 'Rajwaha'. The complainant at that time had no doubt or suspicion against anybody. He also made statement to the Police that his father had no dispute with anybody and he had been murdered by causing injuries by unknown persons and the dead body had been thrown in the 'Rajwaha'. He was going to the Police Station for lodging information, leaving his uncle Rajbir and many persons of his village near the dead body when the Police party met him and he got recorded his statement to SI/SHO Police Station, Kharkhoda on 12.2.2007 at 12.30 p.m. The Mobile phone bearing No.9813142659 of his father was

also missing. 'Ruqa' was sent to Police Station through EHC Sukhbir Singh, on the basis of which formal FIR No.31 dated 12.2.2007 was registered at 12.40 p.m. by (PW-5) ASI Virender Singh, for the commission of offence under Section 302 IPC. Special report was sent to Illaqa Magistrate, Sonapat through Constable Mukesh, who received the same at 4.00 p.m.

SI Virender Singh, SHO (PW-10) along with other police officials who were at the spot started investigation. He conducted inquest proceedings and prepared inquest report (Ex.PL). Blood was found lying at two places i.e. in front of the door of the shop and at the place where dead body was lying. He lifted blood stained earth from both the places and put in two small boxes and after sealing the same with the seal of 'VS'; taken into possession vide recovery memo (Ex.PI). Rough site plan (Ex.PK/1) was also prepared by the Investigating Officer. Dead body of Maha Singh was sent to General Hospital, Sonapat for post-mortem examination through Constable Raj Singh (PW-3). After post-mortem examination, a sealed parcel containing clothes of the deceased along with sample seal were handed over to Constable Raj Singh by the doctor. He produced the same to Inspector Virender Singh. Both the accused were arrested on 13.2.2007. They were interrogated on 14.2.2007. Ishwar-appellant made disclosure statement regarding his concealing the mobile phone and the clothes worn by him at the time of crime in the fields, which were got recovered in pursuance of his disclosure statement. Rohit-appellant made a disclosure statement regarding his concealing the 'Baat' (weight) along with his clothes in his 'Jhuggi' in the fields, which were got recovered in pursuance of his

disclosure statement along with a handkerchief stained with blood. He recorded the statements of witnesses. After completion of investigation, final report was filed in the Court.

After completion of investigation, challan was presented against the appellants. After presentation of challan, the trial Court finding prima facie charges against the accused for the offences as stated above framed charges to which the accused pleaded not guilty and claimed trial.

The prosecution in order to prove its case, examined PW-1 Rakesh-complainant, who mainly deposed as per prosecution version. He also deposed that when after got recording his statement he came to the spot accompanied by the Police, then his uncle Rajbir told that on the previous evening when he had gone to the shop of complainant's father, appellants-accused Rohit and Ishwar were present and altercation was going on regarding some money dispute. Both of them were traced in their 'Jhuggis' but they were found missing. PW-2 Constable Mukesh Kumar is a formal witness, who delivered the special report to Illaqa Magistrate at about 4.00 p.m. on 12.2.2007. PW-3 Constable Raj Singh mainly deposed regarding getting conducted the post-mortem on the dead body of Maha Singh. PW-4 EHC Satyavir is a formal witness, who tendered in evidence his affidavit (Ex.PC). PW-5 Virender Singh, ASI is also a formal witness who recorded the formal FIR. PW-6 Vijay Kumar, Patwari deposed regarding preparing scaled site plan (Ex.PE). PW-7 Narender Singh deposed regarding the interrogation of accused by SHO Virender Singh and also deposed regarding disclosure statement made by the accused Ishwar Singh. Similarly, he deposed regarding the mobile phone and the clothes concealed by him. He

also deposed regarding disclosure statement made by accused-Rohit regarding concealing clothes and weight and he could get recovered the same. PW-8, ASI Hawa Singh is the witness of recovery, who deposed that on 14.2.2007, he joined SHO Virender Singh. Accused-Ishwar got recovered mobile phone belonging to the deceased which was lying concealed in the field of wheat. The same was taken into police possession after preparing sealed parcel. Accused-Rohit also recovered weight of 2 Kgs. and a blood stained handkerchief which were also taken into police possession after preparing sealed parcel. PW-9 Rajbir Singh mainly deposed that on 11.2.2007 he had gone to the shop of his brother at about 9.00 p.m. after taking his meals. At that time, accused-Rohit and Ishwar were sitting in his shop. They had altercation with his brother Maha Singh regarding settling the account. On next day i.e. 12.2.2007 at about 7.30 a.m. he came to know that his brother Maha Singh had been killed and his dead body had been thrown in 'Rajwaha' (drain). He also deposed that his brother used Mobile No.9813142659. That mobile phone was found missing from the shop. He had suspicion on both the accused and on search both were found missing from their 'Jhuggis'. He also deposed that Police lifted the blood stained earth from the spot where the dead body was lying and from the shop. PW-10 Inspector Virender Singh, SHO mainly deposed regarding investigation of the case. PW-11 Dr. J.K. Tyagi deposed regarding conducting of post-mortem on the dead body of Maha Singh by him along with Dr. Rajiv Sethi and Dr. R.K. Kataria and found the following injuries:-

“1. A reddish abrasion 5 x 4 cm on right side of forehead

extending upto right eye brow i.e. root of nose. There is supra added lacerated wound 2.5 cm x .5 cm extending upto root of nose and right eye brow bone deep. Clotted blood was present.

2. A reddish contusion of size 3 x 2 cm over the left frontal area of scalp. There is supra added star shaped lacerated wound in the middle of it bone deep and clotted blood was present.

3. A reddish abrasion of size 3 x 2.5 cm over the left forehead extending upto left eye brow. A supra added lacerated wound of size 1.5 cm x 1 cm present on it which is bone deep. Clotted blood present.

4. A reddish contusion on left temporal area of size 5 cm x 4 cm.

On exploration haematoma was present in the subcutaneous tissues in the area of all the four injuries. There is linear fracture of frontal bone underneath injury No.1. Underlying dura is ruptured. There is haematoma subarachnoid over right frontal lob of brain. Whole of the brain matter is oedematous and congested.

5. A lacerated wound of size 1 cm linear shaped over right side of upper lip. Clotted blood present with associated swelling of lip.

6. Multiple contused abrasion of various sizes and shapes in an area by 10 x 3 cm on left side of upper part of neck extending upto back of neck extending upto back of neck. On dissection soft tissue infiltrated with blood.

7. A reddish abrasion 1 x 1 cm on front of right knee.”

As per opinion of the Board of Doctors cause of death in this case was due to haemorrhage and shock as a result of injuries to the brain which were ante-mortem in nature and sufficient to cause death in normal course of life. The doctor was also shown the weight of 2 Kgs. (Ex.P2) and the doctor stated that injuries 1 to 4 were possible by that weight. PW-12 HC Naresh Kumar is a formal witness, who tendered in evidence his affidavit (Ex.PP). PW-13 Ram Chander also deposed regarding the disclosure statements made by accused Ishwar and Rohit and also regarding the recovery of mobile phone, weight and handkerchief.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. The accused denied the correctness of the evidence and pleaded themselves as innocent and had stated that they had been falsely implicated in this case. No disclosure statement was made by them nor any recoveries were got effected by them.

After going through the evidence and material on record, the learned trial Court convicted the accused for the offences under Sections 302 and 201 read with Section 34 IPC and sentenced them as mentioned above.

We have heard learned counsel for the parties and with their assistance have gone through the evidence on record.

Learned counsel for the appellants firstly contended that in the present case chain of circumstances is not complete and in the case of circumstantial evidence, presumption of innocence of the accused must have

a dominant role. The evidence produced by the prosecution should show that it is only the accused who committed the offence. She argued that in the present case there are missing links and chain is not complete. Learned counsel for the appellants next contended that in the present case motive has been changed as in the disclosure statements illicit relationship has been given the motive whereas the PWs have deposed regarding altercation on some money dispute. Learned counsel for the appellants next contended that recoveries in the present case are also doubtful. The last seen evidence is also a weak type of evidence.

On the other hand, learned Additional Advocate General has argued that case of the prosecution has been duly proved. Firstly, there is last seen evidence i.e. when the accused were seen in the evening having altercation with the deceased. Secondly, the accused Ishwar was found in possession of the mobile phone of the deceased which he got recovered as per his disclosure statement. Rohit got recovered one blood stained handkerchief and weight as per his disclosure statement. These recoveries support and corroborate the prosecution version. Then there is a motive to commit the crime. Further the conduct of the accused that they were found missing after the occurrence also is a circumstance to show their involvement. There is no reason or ground as to why the PWs would depose falsely against the accused. There is nothing on the record to disbelieve evidence on record. The oral evidence is duly supported by medical evidence and the chain of circumstances is complete and the appeal having no merit is liable to be dismissed.

As regards the first contention, we find that PW-1 Rakesh is the

complainant in the present case. He went to the spot and noticed that his father Maha Singh had injuries on his forehead and blood was oozing out of the same and he was lying dead with his face downwards near the 'Rajwaha'. He has also deposed that when he came back after registration of the FIR, his uncle Rajbir told about the altercation with accused Rohit and Ishwar previous evening regarding some money dispute and on search the accused were found missing. This conduct of the accused goes against them and shows that after the occurrence they had run away. Further we find that PW-7 EHC Narender Singh deposed regarding the interrogation of the accused Ishwar and Rohit and also deposed regarding the disclosure statements made by them. PW-8 ASI Hawa Singh also deposed regarding the recovery of weight of 2 Kgs. and blood stained handkerchief got effected by Rohit as per his disclosure statement and the mobile phone (Ex.P.3) was got recovered by appellant-Ishwar in pursuance of his disclosure statement. The Investigating Officer has also proved the disclosure statements and the recoveries. Further PW-13 Ram Chander brother of the deceased also supported and corroborated the version of the prosecution regarding disclosure statements and recoveries in pursuance of disclosure statements. PW-9 Rajbir also deposed that his brother used to keep a mobile phone bearing No.9813142659 and that mobile was found missing from the shop. This fact regarding missing of mobile phone has also come in the FIR itself at the earliest version. Therefore, the recoveries cannot be held as fabricated or falsely planted upon the accused. The FSL report, which is Ex.PJ, shows that the blood was found on the Metallic weight and handkerchief. This FSL report also supports and corroborates

the prosecution version. Further we find that PW-9 Rajbir, who has seen the accused in the evening having altercation with the deceased at the shop also supports and corroborates the prosecution version. The dead body was found at a distance of 5/7 steps from the shop. The blood was found at the shop as well as at the place from where the dead body was recovered and the Investigating Officer had lifted the blood from both the sites. The version regarding altercation of the accused with the deceased is also there in the statement under Section 161 Cr.P.C. of the witness though it is stated that name of the accused had not been specifically mentioned. This witness has also identified both the accused in the Court. This last seen evidence along with the recoveries from the accused and the conduct of the accused that they were found missing after the occurrence and the fact that oral statements of the PWs duly supported by medical evidence and investigation of the case show that the chain of circumstances in the present case is complete. There is no explanation as to how the mobile phone came in possession of Ishwar and how weight and handkerchief got recovered by Rohit were blood stained. The mere fact that in the disclosure statement the accused stated regarding illicit relation etc., these are the statements of the accused and PWs have deposed regarding money dispute etc. Therefore, it cannot be held that a reasonable doubt exists in the present case. Otherwise also, why the PWs, specially the Police officials, would depose falsely against the accused. There is no reason or ground as to why they would falsely implicate the accused and depose against them. From the evidence on record, we find that in the present case, the recovery of mobile phone, weight, handkerchief has been duly proved by the PWs and it cannot be held

as doubtful. The motive is also duly proved. PWs have also deposed regarding last seen of the deceased and the accused together. Conduct of the accused also goes against them. Therefore, from the evidence on record, we find that there is no missing link in the chain of circumstances and the chain of circumstances is complete and points towards the guilt of the accused-appellants only and none else. Therefore, the contentions of the learned counsel for the appellants have no merit.

For the foregoing reasons, there is no merit in this appeal and the same is dismissed.

(Satish Kumar Mittal)
Judge

(Inderjit Singh)
Judge

July 31, 2012.

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