

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-492-DB-2018 (O&M)

Reserved on: 22.8.2023

Date of Decision: 25.8.2023

Rajbir and another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ashish Bansal, Advocate
for appellant No. 1.

Mr. Kewal Singh, Advocate
Legal Aid Counsel for appellant No. 2.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 27.2.2018, upon case bearing SC CIS No. 281 of 2015, by the learned Additional Sessions Judge, Sonapat, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 302, 120-B/34 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants. However, co-accused Vinay and Amit were acquitted of the charges framed against them. Moreover, through a separate sentencing order, drawn on 7.3.2018, the learned trial Judge concerned, sentenced both the convicts-appellants to undergo rigorous imprisonment for life, for commission of an offence punishable under Section 302 read with Section 34 of the IPC, besides also

imposed, upon the convicts-appellants, sentence of fine, comprised in a sum of Rs. 50,000/- each, and, in default of payment of fine amount, he sentenced the convicts-appellants to undergo rigorous imprisonment for a period of three months.

2. The period of detention undergone by the convicts-appellants, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

3. The convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PW-1/A is assigned. The narrations carried in Ex. PW-1/A are, that complainant Mahender Singh got recorded his statement with the police that on 11.05.2015 his grand son Puneet was present in the house, and, at about 09:00-09:30 PM, Vinay, Rajbir, Amit and Lokesh came at their house and asked Puneet for roaming. Complainant refused but they took away Puneet in his car No. DL-8CAW-8242. Puneet told the complainant, that he would come back after some time. When Puneet did not return back, he was searched. At about 1:30 am, complainant received a telephonic information from Raja Harish Chand Hospital, Narela regarding admission of Puneet after sustaining injuries with knife. When complainant reached at Raja Harish Chand Hospital, he found his grand son

dead. He further alleged therein, that sometime ago, the elder brother of Vinay @ Monu, namely, Sonu was arrested by the police in some case, and, due to which Vinay @ Monu was having doubt on his grandson Puneet, who due to this grudge in collusion with his accomplices, had committed the murder of his grandson. On the basis of statement made by complainant the appeal FIR was registered.

Investigation proceedings

5. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 21.8.2015, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 302 read with Section 34, and, under Section 120-B of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 20 witnesses, and, thereafter the prosecution evidence was closed. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce

defence evidence but did not lead any witness into the witness box.

9. As above stated, the learned trial Judge concerned, proceeded to convict the appellants for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the appellants.

Submissions of the learned counsels for the appellants

10. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convicts, be dismissed.

**The prosecution case is rested, upon the deposition of PW-9,
who propagated the theory of last seen.**

12. Mahender Singh, who stepped into the witness box as PW-9, has deposed in tandem with his previously made statement in writing, before the police officer concerned, and, to which Ex. PW-9/A, is assigned.

13. An incisive, and, circumspect reading of his deposition, as carried in his examination-in-chief, does make imminent surgings, that the said witness had last seen the convict Lokesh and Rajbir to, on the ill fated day, hence accompany his grandson deceased Puneet. The said last seeing

by PW-9 of his deceased grandson Puneet along with the convicts (supra) occurred at 8.00/9.00 P.M. on 11.5.2015. However, at about 1.00/1.30 A.M., on 12.5.2015, hence with not much time elapsing from PW-9 last seeing his deceased grandson Puneet to join the company of convicts Lokesh and Rajbir, he received an intimation that his grandson Puneet was lying in a serious condition in Raja Harish Chander Hospital, Narela. Subsequently, and, thereafter the deceased ultimately succumbed to the ante mortem injuries, as were noticed to be occurring on his body, by the doctor, who made an autopsy, upon him.

14. If the defence had succeeded in establishing, that PW-9 had made a false or untruthful testification in his examination-in-chief about the crime version, thereby the convicts would be entitled to secure a verdict of acquittal from this Court.

15. However, on a closest reading of the deposition, as occurs in the cross-examination of PW-9, no emanations surge-forth whereby this Court would become constrained to discredit the testification of PW-9, as carried in his examination-in-chief. Importantly so, when there is no suggestion, thus meted to PW-9, during the course of a grilling cross-examination being made upon him, that he had not last seen, thus on the ill fated day, and, time, his deceased grandson Puneet to join the company of the convicts. Therefore, it appears that the theory of last seen, as propagated by the prosecution through PW-9, does acquire an immense aura of truth.

16. Be that as it may, the evidence of last seen if thus has evidentiary worth, which it would have, unless the proponent of the theory of last seeing of the convicts, and, the deceased, had been successfully proven by the defence, to in his making such a propagation, rather

prevaricate the said fact, thereupon reiteratedly the unblemished rendition of

the theory of last seen by the prosecution witness concerned, rather would acquire immense evidentiary worth.

17. As stated (supra), since in the testification of PW-9, as occurs in his cross-examination, there is no iota of echoing, which may have constrained this Court, to lean towards a conclusion, that PW-9 had mispropagated the theory of last seeing his deceased grandson Puneet to join the company of the convicts. Therefore, but obviously, the theory of last seen, as propagated by the prosecution through PW-9, acquires utmost evidentiary vigour.

Signed disclosure statement of convict Rajbir @ Lala Ex. PW-17/A

18. During the course of investigations, being made into the appeal FIR, convict-appellant Rajbir @ Lala made a signed disclosure statement, to which Ex. PW-17/A is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x
 Vinay @ Monu S/o Inder, Amit @ Lotu S/o Suresh, caste Jat and Lokesh @ Pandey S/o Jage Ram, Luhar residents of deh were in friendly relations for many days. Sonu, elder brother of Vinay @ Monu of our village was arrested by the police in some case. Vinay was having doubt on Punit that my brother has been got apprehended by Punit by doing the roll of secret informer. Vinay had said many times to commit murder of Punit. On 11.5.15, Vinay @ Monu, Amit @ Lotu, Lokesh @ Pandey and me, as per plan, went to the house of Punit at 9.00/9.30 O'clock in the evening, with the intention to commit murder of Punit. We called Punit with the pretention of wandering in his car and we consumed liquor and beer and moved towards Murthal with the pretention to take meals. Then on Safiabab border Vinay purchased country made liquor from the liquor vend for Amit and Punit and beer for himself, me and Rajbir. We consumed liquor and beer, one peg each inside the

vehicle then as per consultation, we got the car turned from the outer turn of Safiabad and got turned the car towards Nahri turn. After crossing the railway crossing, we were going in the car and were consuming liquor when Vinay @ Monu started showering abuses to Punit. Punit was driving the car. Amit @ Lotu was sitting in front conductor seat of car. We all three were sitting on the rear seat of car. Amit sitting on the front seat caught hold Punit. I and Vinay caused injuries to Punit with our respective knives on the hands and legs. Lokesh caused injuries to Punit with the axe kept in the car. After causing injuries, car fell in the ditches. After alighting from the car, we all opened the window of driver side and caused injuries to Punit with knives and axe. We all took Punit as died, left him in the car and ran away with our respective weapons. I was in possession of knife that has been kept concealed by me under the clothes in the iron almirah kept in the room in my house in Bankner. I can get it recovered after demarcation and I can demarcate the place of occurrence.”

19. Pursuant to the above signed disclosure statement, convict Rajbir @ Lala got recovered the incriminatory knife, which was taken into police possession through recovery memo Ex. PW-12/E.

Signed disclosure statement of convict Lokesh @ Pandey Ex. PW-15/A

20. During the course of investigations, being made into the appeal FIR, convict-appellant Lokesh @ Pandey made a signed disclosure statement, to which Ex. PW-15/A is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

*“x x x x x
The previous disclosure statement made by me was a lie to burgle the police. Truth is, that I was in friendship with Vinay @ Monu S/o Inder, Rajbir @ Lala S/o Maha Singh, Caste Jat & Amit @ Lotu S/o Suresh, Caste Jat residents of Bankner for a long time. Brother of Vinay @ Monu namely Sonu was arrested in some case. Vinay was having doubt on Punit that my brother*

has been got apprehended by Punit by doing the roll of secret informer. Vinay @ Monu said many times to commit murder of Punit. On 11.5.15, Vinay @ Monu, Rajbir @ Lala, Lokesh @ Pandey and me, as per plan, went to the house of Punit at 9.00/9.30 O'clock in the evening, with the intention to commit murder of Punit. We called Punit with the pretention of wandering in his car went to Ambedkar Colony, Bankner and consumed liquor and beer and moved towards Murthal for taking food. Then on Safiabad border Vinay purchased country made liquor from the liquor vend for Amit and Punit and beer for himself, me and Rajbir. We consumed liquor and beer one peg each inside the vehicle then as per consultation, we got the car turned from the outer turn of Safiabad. After crossing the railway crossing, we were going in the car and were consuming liquor when Vinay @ Monu started showering abuses to Punit and quarrel started inside the car. Amit @ Lotu was sitting in front conductor seat of car, while moving in the car, I, Rajbir @ Lala, Vinay were sitting on the rear seat of car. When we reached near Munirpur chowk, Amit @ Lotu gave blow with empty beer bottle to Punit which he was holding in his hand. Rajbir @ Lala and Vinay @ Monu gave blows to Punit with knife and I caused injuries to Punit with axe and the car stopped in the ditches near Munirpur chowk. After alighting from the car, Rajbir and Vinay opened the window of driver side gave blows to Punit with our respective weapons to Punit. We all took Punit as died, and we all ran away with our respective weapons from the spot. The axe with which I had caused injuries to Punit that had been concealed by me in the bushes on Kheri Manajat road near the chowk about which nobody else except me has any knowledge. I can get the axe used in the occurrence, recovered and I can demarcate the place of occurrence.”

21. Pursuant to the above signed disclosure statement, convict Lokesh @ Pandey got recovered the axe, which was taken into police

22. The disclosure statements (supra), carry the signatures, in Hindi, of both the convicts-appellants. In their signed disclosure statements (supra), both the convicts-appellants confessed their guilt in committing the murder of the deceased, by inflicting injuries on the person of the deceased, hence with the incriminatory weapons of offence. The further speaking therein is qua their keeping, and, concealing the incriminatory weapons of offence. Moreover, in the above disclosure statements, there also occur speakings about their alone being aware about the location of their hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory item(s) to the investigating officer concerned, from the place of their hiding, and, keeping the same.

23. The above disclosure statements, do acquire utmost evidentiary solemnity, as thereons exist the signatures, in Hindi, of the convicts-appellants, which, however, they have neither ably denied nor proven the said denial. Moreover, the above confessions of guilt are neither bald or simpliciter confession, nor are hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through the proven recovery memos, both the convicts-appellants caused recovery of the incriminatory weapons of offence, to the investigating officer concerned.

24. Since the recovery of the incriminatory weapons of offence, as made through recovery memos Ex. PW-12/E, and, Ex. PW-15/C, have not been proven to be false or contrived recoveries, inasmuch as, it has not been cogently established, that prior to the making of the above recoveries, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite

recoveries rather was an open place, hence leaving scope for any person, other than the convicts-appellants to place them there. Thus, the above recoveries are not only to be concluded to be a validly made recoveries, but are also to be concluded to be of the very same incriminatory weapons, which did become used by the convicts-appellants, in theirs causing the murder of the deceased. Therefore, the above signed disclosure statements, and, also the subsequent thereto making(s) of the recovery memos, at the instance of the convicts-appellants, thus to the investigating officer concerned, do also make this Court to draw a firm conclusion, that resultantly the theory of last seen, as propagated by the prosecution, through PW-9, does therefrom does acquire immense corroborative vigour.

Post-mortem report

25. The autopsy on the body of deceased Puneet was conducted by PW-8 Dr. R.P.Singh, who, has tendered his affidavit Ex. PW-8/A, as part of his examination-in-chief, and, has proven the post-mortem report, to which Ex. PW-8/B, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of deceased Puneet.

“1. A superficial incised wound having fresh margins and of size 04cm x 0.2cm was present on centre of neck, placed horizontally and 07cm below chin.

2. An incised stab wound having fresh margins and of size 2.5 cm x 0.2cm x 03cm deep obliquely was present on medial aspect of dorsum of right hand.

3. An incised stab having fresh margins and of size 2.5 cm x 0.2cm x 03cm deep obliquely was present 0.5cm proximal to injury no-2.

4. An incised stab having fresh margins and of size 2.5 cm x 0.2cm x 03cm deep obliquely was present 01cm proximal to injury no-3.

5. An incised wound having fresh margins and of size

07 cm x 0.2cm x muscle deep was present on right palm, extending from just below wrist to horizontal palm crease.

6. An incised stab wound having fresh margins and of size 2.8 cm x 0.2cm was present on dorsal aspect of right forearm, placed horizontally and 03cm proximal to wrist. Further, it was cutting muscles and blood vessels. Lateral end was sharp and medial end was blunt. The depth of the wound was 03cm.

7. An incised stab wound having fresh margins and of size 04cm x 0.2cm was present proximal to injury no-6, placed horizontally. Further, it was cutting muscles and vessels. Lateral end was sharp and medial end was blunt. The depth of the wound 3.5cm.

8. An incised stab wound having fresh margins and of size 2.5cm x 0.2cm was present 01cm lateral to injury no-7, placed horizontally. Further, it was cutting muscles and blood vessels. Lateral end was sharp and medial end was blunt. The depth of the wound was 3.5cm.

9. An incised wound having fresh margins and of size 1.5cm x 0.2cm was present on lateral aspect of upper part of right thigh, placed 11cm below and lateral to anterior superior iliac spine.

10. An incised stab wound having fresh margins and of size 04cm x 0.2cm was present 04 cm lateral to injury no-9. The depth of the wound was 04cm.

11. An incised wound having fresh margins and of size 06cm x 0.2cm was present on posterior aspect of right thigh, placed horizontally and 05cm below gluteal fold and 12cm lateral to natal cleft. The direction of the wound was horizontal, medially and forward. It was cutting muscles and blood vessels. The depth of the wound was 15cm.”

26. The cause of demise of the deceased, has been opined by PW-8 to arise from haemorrhagic shock owing to the injuries to the blood vessels, produced by sharp cutting/stabbing object. All the injuries were opined to be ante-mortem in nature, and, were sufficient to cause death in

the ordinary course of nature. Thus, the disclosure statements, as made by the convicts-appellants concerned, and, also consequent therewith recoveries, do also become fully supported by the above medical account/evidence.

Final order

27. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes imposed upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed, besides also the consequent thereto sentence(s), as became imposed upon the convicts-appellants, by the learned convicting Court, is also maintained, and, affirmed. If the convicts-appellants are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

28. Records be sent down forthwith.

29. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 25th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No