

2024:PHHC:115017-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 22.08.2024
Pronounced on: 31.08.2024

1. CRA-633-DB-2005

Manish Appellant

Versus

State of Haryana Respondent

2. CRA-S-2058-SB-2003

Sunil Appellant

Versus

State of Haryana Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Munish Behl, Advocate
for the appellant (in **CRA-633-DB-2005**).

Mr. Sachin Mittal, Advocate
for the appellant (in **CRA-S-2058-SB-2003**).

Mr. P.P.Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since both the criminal appeals arise from a common judgment, therefore, both are amenable for a common verdict becoming recorded thereons.

2. However, a reading of the order passed by the learned Sessions Judge, Gurgaon on 17.09.2003, order whereof becomes extracted hereinafter discloses that on 22.04.2002, when the Sessions

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moved that the accused Sunil was a juvenile on the date of occurrence. Consequently, it also further appears therefrom, that thereby the matter was referred to Chief Judicial Magistrate, Gurgaon, thus for an apt adjudication becoming made thereon. However, the learned Chief Judicial Magistrate, Gurgaon, in his report held that the age of accused Sunil as on 03.11.2000, was well below 18 years and thereby held him to be a juvenile.

“In so far as accused Sunil is concerned, the following order had been passed by my learned predecessor on 03.09.2002:

On 22.4.2002 the case was fixed for DWs and arguments when the defence moved an application that accused Sunil was juvenile on the date of occurrence. The matter was referred to Chief Judicial Magistrate, Gurgaon for determination. Ld.. Chief Judicial Magistrate, Gurgaon in her report has held that the age of accused Sunil as on 3.11.2000 was well below 18 years and held him to be juvenile. The Juvenile Justice (Care and Protection of Children) Act, 2000 came into force w.e.f. 1.4.2001, on that date the present case was pending. Thus, it comes under the definition of section 20 of the Act ibid and the proceedings shall be continued in this court. No additional question is required to be put to the accused, in their statement under section 313 Cr. P. C. already recorded, after re- examination of PW7 namely Dr. Vishesh Kumar. To come up on 1.10.2002 for DWs, if any, and arguments.”.

In the light thereof, the present trial against accused Sunil proceeded. A finding has been recorded by this court that he had committed the offence punishable under section 302 Indian Penal Code. In terms of the provisions of Section 26 of the Juvenile Justice Act, 1986, accused Sunil shall be produced before Juvenile Court (Court of Chief Judicial Magistrate, Gurgaon) after sometime. Juvenile Court shall thereafter proceed in the matter in accordance with the law.

xxxx xxxx xxxx

3. Furthermore, it also appears on a reading of the above extracted order that since the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force with effect from 01.04.2001, and

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that when on the coming into force of the said Act, the Session case was pending, therefore, in terms of Section 20 of the Act (supra), the proceedings became amenable to be continued in the Court of Session. Therefore, the trial against the juvenile in conflict with law, namely Sunil, thus tenably continued with the Court of Session and since he was convicted for an offence punishable under Section 302 IPC, yet in terms of Section 26 of the Juvenile Justice Act, 1986, the juvenile in conflict with law, was directed to produced before the Juvenile Court concerned, so that the said Juvenile Court proceeds in accordance with law in making an appropriate order vis-a-vis the juvenile in conflict with law namely one Sunil.

4. After the appearance of the juvenile in conflict with law before the Chief Judicial Magistrate/Juvenile Court, Gurgaon, the said Juvenile Court after hearing the juvenile in conflict with law on the quantum of sentence, made an order dated 20.09.2003, relevant portion whereof is extracted hereinafter.

“ 1. xxxx xxxx

2. xxxx *The delinquent juvenile Sunil has been convicted for commission of double murder by the court of Shri S.D. Anand, learned Sessions Judge, Gurgaon vide judgment dated 16.9.2003 and after convict in the case file has been sent to this court under section 26 of the Juvenile Justice Act, 1986 for passing further orders in accordance with law. The age of delinquent juvenile has been shown as 18 years on the first page of the judgment. As the delinquent juvenile has committed double murder, therefore, it will not be in the interest of justice to release the delinquent juvenile on probation of good conduct. Hence, in view of the provisions of under Section 15(g)(1) of*

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*Juvenile Justice (Care and Protection of Children) Act 2000 and under section 21(a) (i) of the Juvenile Justice Act, 1986, **it is ordered that the delinquent Juvenile/convict Sunil be sent to the Observation Home, Sonapat for five years.***

5. In addition, the learned Sessions Judge, Gurgaon, after hearing accused Manish, on the quantum of sentence, made the hereinafter extracted order on 17.09.2003.

“In so far as accused Manish is concerned, he has made the following statement on point of sentence:

I am first offender. I faced the ordeal of trial for about more than 2½ years.”

I have heard Shri Ravinder Singh, learned Public Prosecutor for the State and Shri B.B. Sharma and Shri T.R.Bhalla learned counsel for accused.

*Though accused Manish did indeed face the ordeal of trial for a fairly long period, it cannot be denied that he has been held guilty of having murdered none else or other than his own parents. In the light thereof, no leniency in the matter of award of sentence would be appropriate. **It is ordered, accordingly, that accused Manish shall stand sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, accused Manish shall undergo further RI for six months.***

6. Aggrieved from the sentence of life imprisonment and the order (supra) passed by the juvenile Court concerned, thus both the convicts/accused respectively preferred separate appeals respectively bearing no. **CRA-633-DB-2005** and bearing no.**CRA-S-2058-SB-2003**, whereby they challenge both the common verdict of conviction (supra), and separate orders of sentences (supra), as became respectively passed qua them, thus by the Court of Session and by the Juvenile Court/CJM, Gurgaon.

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Factual background

7. The deceased herein are one Parshadi Lal son of Mohan Lal and his wife Prem Devi. They had two sons namely Manish (appellant herein) and Vinod. Manish used to reside with his parents (since deceased) whereas, accused Sunil was residing as tenant, in a portion of the house belonging to the deceased.

8. It has been alleged that Manish used to insist upon his parents to transfer all their property in his name, whereas, his parents insisted that all their children would have equal shares in their property.

9. On 2.11.2000, Manish rang up PW-10 Mohinder, to inform that the house (where the deceased and Manish were residing) was found locked and he had called upon the latter to intimate, if his parents had visited him. PW-10 Mohinder told Manish that his parents had not visited him. The said information was conveyed by PW-10 Mohinder to Mahesh and his wife Kamlesh.

10. On 3.11.2000, PW-10 Mohinder went to the house of the deceased in the company of PW-9 Kamlesh and her husband Mahesh. All of them noticed that there was a lock on the main gate. They made enquiries from Om Parkash (an immediate neighbour of the deceased) to find out if he had seen Parshadi and Prem Devi. Om Parkash informed them that he had seen them at about noon time on 1.11.2000 but had not seen them thereafter. Om Parkash also informed them that he had seen Manish and Sunil roaming on the roof prior to 2.11.2000 and he had not seen them thereafter.

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11. All the aforesaid persons noticed that a foul smell was coming from inside the house. The lock was broken opened and they all went inside by opening the front door. On entering the house, they found the dead bodies of Parshadi and Prem Devi lying over there covered by a cloth. PW-10 Mohinder went to the Police Station and lodged complaint Ex.PM.

Investigation proceedings

12. The police accompanied PW-10 Mohinder to the spot. A piece of cotton (Ex.P31) soaked with blood was recovered from the spot and was taken into possession vide recovery memo Ex.PN. Four pieces of bangles (Ex.P30/1 to Ex.P30/4) and three pieces of hockey sticks were taken into possession vide recovery memo Ex.PO which was attested by PW10 Mohinder and Mahesh. The spot was got photographed. Both the accused were arrested on the evening of 3.11.2000.

13. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

14. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Sessions, thus the learned Committal Court vide order dated 15.12.2000, committed the case for trial to the Court of Session.

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15. On finding a prima facie case, charges under Sections 302/34 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

16. In support of the prosecution case, the prosecution examined eleven witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Sessions Judge, Gurgaon, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined three witnesses in their defence.

17. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Sessions Judge, Gurgaon, the latter proceeded to make the afore verdict of conviction, and, also the consequent thereto sentence(s) in respect of the charges drawn against them, in the appeal FIR, in the manner detailed (supra).

Submissions of the learned counsel for the convicts-appellants.

18. (1) The learned counsel appearing for the appellant(s) have contended with much vigor before this Court, that the verdict of conviction, and also the consequent thereto orders of sentence(s), as became imposed upon the convict-Manish and the delinquent/juvenile-Sunil, thus respectively by the learned Convicting Court and by the juvenile Court concerned, are not sustainable in the eyes of law.

(2) The learned counsel for the appellant(s) submit that the appellant-Manish are two brothers i.e. he himself and Vinod. A perusal of para No. 30 of the impugned judgment, reveals that Vinod was disinherited from his property by his father. Therefore, the motive,

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if any, to commit the murder of the deceased was inhering in Vinod and not in the appellant-Manish, as such, the latter has been falsely implicated.

(3) There is no eye witness to the alleged occurrence and the case is based on circumstantial evidence. Although there was no credible evidence against the appellant(s), yet the appellant(s) have been held guilty and sentenced. The alleged recovery of weapons of offence have been planted upon them. No independent witness was joined either at the time of disclosure statement(s) or at the time of alleged recoveries.

(4) The learned Court below ignored the submission of the counsel for the appellant to the effect that there was an unexplained delay in the lodging of the FIR. Moreover, it is apparent from a reading of the testimony of DW-3 HC Dinesh, that Inspector Rajinder Singh left the police station at 6.15 PM for patrolling and investigation of the present case. Thus, the investigation of the case had in fact started on 01.11.2000 and the lodging of complaint by PW-10 Mohinder on 03.11.2000 was a make believe affair.

(5) The trial Court below also ignored the material fact that if the appellant concerned, had committed the murder of his parents, thereupon after commission of the said crime, he would have fled. Contrarily, he did not flee thereby the said non fleeing of the accused concerned, is demonstrative of an act consistent with his innocence.

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(6) The complainant-party in connivance with the police fabricated the evidence of 'last seen'. PW-8 Om Parkash, neighbour of the deceased was introduced by the police to have lastly seen the deceased and appellant. However, the evidence of the real brother of deceased, who stepped into the witness box as DW-2, and, who resides adjacent to the house of deceased has not been taken into consideration.

Submissions of the learned State Counsel

19. On the other hand, the learned State counsel has argued with much vigor before this Court, that the impugned verdict of conviction and consequent thereto order of sentence(s), as respectively imposed upon the convict-Manish, and the delinquent-juvenile Sunil are well merited, and, that it does not require any interference being made by this Court.

**CIRCUMSTANTIAL BASED EVIDENCE CASE
ANCHORED, UPON THE THEORY OF LAST SEEN TESTIFIED
BY PW-8**

EXAMINATION-IN-CHIEF OF PW-8.

20. Through the stepping into the witness box of PW-8-Om Parkash, the prosecution strived to prove the genesis of the prosecution case, as becomes embodied, in the appeal FIR to which Ex.PM/1 is assigned. In his examination-in-chief he articulates that, he had last seen Parshadi and Prem Devi on 01.11.2000 at about 12.00 noon. He further testified that he had seen Manish and Sunil in the said house upto the evening of 02.11.2000. Moreover, he also testifies that he made enquires from the accused about the whereabouts of the deceased

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on 03.11.2000, on which he became informed that he has seen them at about noon time on 01.11.2000 and thereafter he had not seen them.

21. PW-8 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or, contrived. Therefore, credence is to be assigned to the deposition of PW-8.

22. In addition, there is also an echoing in the cross-examination of PW-8, that he had seen both the accused roaming on the roof of the deceased's house on 02.11.2000. He further stated that the lights of the house of the deceased were off on the night of 2.11.2000 and those were again off on 3.11.2000. PW-8 being an immediate neighbour, was the best person to observe the incidents occurring in the house of the deceased. Thus, it has to be concluded that the prosecution theory of last seeing of the accused in the house of the deceased, does thereby become unflinchingly established. Resultantly an apt inference therefrom, is that, none other than the accused committing the crime event.

ANALYSIS OF THE DEPOSITION MADE BY DW-2.

23. Though the learned counsel for the appellant has argued that the learned trial Court rather had not considered the statement of DW-2-Jugal Kishore, who is the brother of the deceased, especially

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when his house was adjacent to the house of the deceased, and who had supported the version set forth by accused Manish.

24. The said version becomes set forth in the examination-in-chief of DW-2, examination-in-chief whereof becomes extracted hereinafter.

“Parshadi Lal was my real brother. He was younger to me. Our houses are adjacent to each other. Chandan Nagar has a population of about 100000. Last Parshadi Lal met me on 2.11.2000. I had entrusted him the job of lodging the FTR about the loss of my D.L. He handed over to me copy of FIR at about 7.00 PM on that day. I never witnessed or heard about any dispute between Parshadi and Manish Kumar accused. Manish has one brother by the name of Vinod. It is not to my notice that Manish had been disinherited by Parshadi Lal. There are no documents to that effect. Manish had been to me on 2.11.2000. He did not have any conversation with me but he was moving around in the house. The police reached the spot at about 2.00 AM. On 2.11.2000 again said I do not recollect the time it came over there on the night of 2.11.2000 that is the night intervening 2/3-11-2000. Mahender Kumar is brother in law (sister's husband of the accused). Mahender reached the spot at about 12.00 night or 1.00 AM on the night intervening 2/3-11-2000. Manish was throughout with the police during the course of investigation. Mahender stayed in the gas godown which is near the house of accused. None of us was associated by the police. House of my brother Laxmi Narain is also adjacent to my house.”

25. On anvil of the said witness making echoings (supra), in his examination-in-chief, the counsel for the appellants argues that the

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purported etching in the mind of the accused the purported motive to commit murder of the deceased, rather arising from the factum as to the deceased disinheriting the accused concerned, thus becomes completely shattered. Moreover, the learned counsel for the appellant has thereons further planked a submission that since the accused did not flee from the site of occurrence, thereupon, theirs non fleeing from the site of occurrence, thus is suggestive of their conduct being consistent with their innocence. Concomitantly therebys, the counsels for the appellant(s) have argued that the verdict of conviction requires an interference being made.

26. However, for the reasons to be assigned hereinafter the said made submission is rudderless and is required to be rejected.

27. The reason for forming the above conclusion becomes firmly embedded in the speakings made by PW-10 Mahender, qua upon his visiting the house of the deceased alongwith PW-9 Kamlesh and her husband, thereupons theirs discovering that the house of the deceased was locked. He further deposes that after breaking open the locks of the house of the deceased, thereupons all (supra) making their ingress therein. The un-rebutted speakings (supra) occurring in the testification borne in the examination-in-chief of the afore witness, naturally convey that the accused being the son of the deceased, though was expected to reside in his parents house, than his taking to visit the house of DW-2, which rather he did on the ill fated night. Resultantly,

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to the house of the deceased-parents and that too without any intimation to DW-2, that they are intending to stay in his house, thus on the ground that the house of the deceased-parents is locked. Therefore, the effect of the above non intimation (supra), by the accused to DW-2, but is personificatory that the accused were actively suppressing the reason for theirs intending to visit the house of DW-2, located in immediate proximity to the house of the deceased.

28. The further effect thereof, is that, the mindset of the accused becoming etched with a penally inculpable *mens rea*. Therefore, irrespective of the fact that the accused rather not fleeing from the site of occurrence, yet therebys, they cannot be said to be personifying conduct which can be stated to be consistent with their innocence.

29. Furthermore, since DW-2, does not state that upon the accused visiting his house whether they stayed with him or not, nor when he speaks qua after the accused visiting his house, they left his house for theirs staying elsewhere during night. Consequently, the omission of speaking (supra) by DW-2, also necessarily begets an inference that as a matter of fact, the accused did not visit the house of DW-2, rather they visited some other place after committing the murder of the deceased, especially when there exists unrebutted evidence testified by PW10, that the house of the deceased was locked and only after the said locks becoming broken open, that the witness (supra)

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of the house of the deceased and that too without any intimation being made to DW-2, who is the brother of the deceased and his immediate neighbour, about the reason for the deceased qua after theirs purportedly locking their house, they were leaving for some destination. Consequently, the effect of the above non intimation by the deceased to DW-2, who is evidently their immediate neighbour, when becomes entwined with PW-8, thus unrebuttedly testifying that he had 'last seen' the accused to be roaming on the roof of the deceased's house, is that, no person other than the accused, but after locking the house of the deceased and that too after committing the crime event, thus, departing therefrom either to the house of DW-2 or to some other place.

30. Reiteratedly, as stated (supra), since there is no evidence on record suggestive, that the afore witness had suo motu locked the house of the deceased and/or that the witness (supra) had installed a lock on the door of the house of the deceased, thus for creating a false incriminatory evidence against the accused. Therefore too, the accused are to be declared to, after committing the crime event locking the door of the house of the deceased and subsequently theirs making disappearances therefrom.

31. The sequel of the above conclusion, is but that, the accused did *prima facie*, hold therebys the relevant *mens rea* to commit the crime event.

Arguments with regard to motive of the accused.

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32. The learned counsel for the accused has contended with vigor that since the purported motive attributed to the accused as became purportedly engendered from the deceased disinheriting the accused, rather has remained unproven, thereby, since proof of motive is imperative upon a prosecution case rested upon circumstantial evidence. Resultantly since the motive attributed to the accused became unproven, thereby the pivotal incriminatory link in the chain of incriminatory circumstances, erected by the prosecution rather completely falters. Resultantly thereby the accused are entitled to a verdict of acquittal.

33. However, even the said submission is rudderless, as it is evident on a perusal of the evidence on record, that the accused Manish was residing in his parents house for a period of more than two decades and that he had not been residing elsewhere. Though prima facie, the effect of the above unrebutted speakings existing in the examination-in-chief of DW-2, is that, the accused was living with utmost cordiality with his deceased parents as unless inter-se cordiality existed amongst the accused Manish and his parents, thereupon, he would not have been residing with his parents rather would have taken to reside elsewhere.

34. Be that as it may, irrespective of utmost inter-se purported cordiality existing amongst the accused Manish and his parents, yet the same does not thereby carry any exculpatory effect. The reason for making the above inference spurs from the factum that the defence in

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premise that the accused brother one Vinod, rather became disinherited, and thereby the motive to commit the crime event became etched in the mind of the brother of the accused one Vinod rather than in accused Manish. Therefore, it is argued that there is weak/fragile evidence on record suggestive qua any motive to commit the crime event inhering in the mind of the accused Manish. Resultantly thereby, it is argued that the above imperative link in the chain of circumstantial evidence becomes shattered.

35. Even if assumingly that there was purported inter-se cordiality amongst the accused besides given purportedly qua the deceased rather disinheriting their son Vinod, thereby, the motive to commit the crime event etching in the mind of Vinod rather than in the mind of accused Manish. However, initially the said exculpatory plea was required to become well founded upon cogent evidence to the said effect becoming adduced.

36. Though the accused Manish for proving the said fact had applied for the requisition of the records of HMA case filed by one Vinod. Though through the hereinafter extracted order becoming made on 31.03.2003, the apposite records for proving the said factum became requisitioned and in pursuance thereof, the apposite records also became received in the establishment of the learned trial Judge concerned.

“No DW is present nor had any been summoned for today.

Ld. Counsel for the accused has today only, filed an

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application for the summoning of the records of HMA case which had been filed by Vinod Kumar, a brother of Manish Kumar accused and which has been requisitioned by the Hon'ble High Court in FAO No. 40 of 1999 admitted on 7.4.1999. Ld. Counsel states at the bar that as per his instructions, the defence plea would be that it is Vinod Kumar, a brother of Manish accused, who had been disinherited by the father of the accused and who had committed the impugned crime. Ld. Counsel states at the bar that the fact of disinheritance would be evident from the perusal of records of HMA case which (case) had been dismissed by the court of Shri V.P. Bishnoi, against whose orders FAO No. 40 of 1999 had been filed. Issue a letter of request in the context for 21.4.2003.”

37. However, the said record remained unutilized for the proving the facts (supra). If so the lack of utilization of the records concerned, despite theirs being received in the establishment of the learned trial Judge concerned, is but that, the said records were unable to make any speakings to support the exculpatory plea (supra). Therefore, since obviously the records for purportedly supporting the plea (supra) became unutilized by the accused. Resultantly therebys the abandonment of utilization of the relevant records by the accused, to prove the exculpatory plea (supra), begets the consequence, that the accused were taking a flimsy exculpatory plea, qua on account of disinheritance of Vinod by the deceased, thereby the said was nursing the apposite motive, than the accused nursing a motive to commit the crime event.

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38. Even otherwise since PW-10 has unrebuttedly deposed that the accused Manish was constantly quarrelling with his parents for conferring all the rights qua their properties vis-a-vis him. Therefore, even if assumingly there was any purported inter-se cordiality, amongst the accused and the deceased besides when the accused Manish has failed to prove the exculpatory espousal raised by him, that since his brother Vinod became disinherited by the deceased, thereby his brother Vinod was nursing a motive to murder his deceased parents, yet in the wake of the above unrebutted speakings made by PW-10, in examination-in-chief, but rather results in the conclusion that the accused was constantly squabbling with his parents for conferring upon him all the rights in their property(ies). As such, the relevant motive becomes proven.

39. In addition, when there exists ample evidence qua the accused Sunil being a tenant in the house of deceased and his having friendly relations with co-accused Manish, besides with evidently both also being last seen roaming together during the relevant period, thereby both the accused shared a common *mens rea*, as such, both are liable to be convicted for the charged offences, as aptly done.

40. Furthermore, since this Court has hereinafter assigned credence to the respectively made incriminatory disclosure statements by both the accused, whereafter, the relevant recoveries became effected at their respective instances to the investigating officer

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concerned, thereby too, the above alluded to evidence, thus garners immense corroboration therefrom.

DISCLOSURE STATEMENT(S) OF ACCUSED AND CONSEQUENT THERETO RECOVERIES

Signed disclosure statement of accused Manish Kumar.

41. During the course of investigations, being made into the appeal FIR, convict Manish Kumar made a signed disclosure statement, to which Ex. PQ is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses, Manish Kumar accused aforesaid while in police custody, during interrogation, disclosed without any greed, pressure and fear that "On 1.11.2K I and Sunil s/o Noor Mohd. Musalman resident of Behra Mutarja P.S. Nasirabad Distt. Rai Bareli U.P. with our common intention had murdered my mother Prem Devi and father parshadi Lal in our house by causing injuries with Hockey, knife, Iron Barchha etc. I after causing injuries, left Hockey at the spot on account of damaging and I had also Iron Barchha and Sunil was having knife. Sunil had murdered my parents by causing injuries with knife and I caused injuries with Hockey and Iron Barchha. It is not known where Sunil has kept concealed a knife after murder. I have kept concealed Iron Barchha by which I had murdered my parents and clothes wearing at the time of murder i.e. pent, shirt having spot of blood after putting in poethylene paper, in the northern-eastern cornor in the Tand in the court yard, to which, except myself no body has its knowledge and can get the said recovered and I can point out the place where

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I and sunil placed the dead bodies of my parents after their murder. Memo of disclosure statement of aforesaid EX.PQ.

42. Pursuant to the above signed disclosure statement, convict Manish Kumar, ensured the effectuation of the recovery of weapon of offence i.e. iron barcha and blood stained clothes, which were taken into police possession, through recovery memo Ex. PT. Furthermore, recovery of pieces of hockey and bangles were made through recovery memo Ex.PO.

Signed disclosure statement of accused Sunil.

43. During the course of investigations, being made into the appeal FIR, accused Sunil made a signed disclosure statement, to which Ex. PP is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses, Sunil accused aforesaid while in police custody, during interrogation, disclosed without any pressure and fear that "On 1.11.2K I and Manish s/o Parshadi Lal with our common intention had murdered Parshadi Lal father of Manish and Prem Devi mother of Manish with the knife in their house. We both with our connivance have murdered. I have kept concealed a knife with which I have murdered causing injuries in polethene paper after wrapping in T. Shirt pent Jeans, T-Shirt and pent which I had worn at the time of murder on which blood stains were placed, under the bori-tatt in the corner of my residential room to which, except myself, no body has its knowledge. I can get the same recovered on pointing out and I can point out the place where I and Manish had murder mother-father of Manish

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and where dead bodies were kept after murder, I can get the same recovered.

44. Pursuant to the above signed disclosure statement, accused Sunil, ensured the effectuation of the recovery of the weapon of offence i.e. knife, and blood stained clothes, which were taken into police possession, through recovery memo Ex. PR.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).

45. A reading of the respectively made disclosure statements, does reveal, that not only both the accused confessed their participation, in the crime event, but also reveal qua theirs' evincing their readiness to cause recoveries of the relevant incriminatory items, to the investigating officer concerned, thus from their respective place(s) of their hiding and keeping by them, and which place(s) were but known exclusively to them, and whereafter, also they through recovery memo(s) respectively comprised in Exhibit PR, and, in Exhibit PT, also respectively did cause the relevant recoveries, to the investigating officer concerned. The above drawn disclosure statements when become signed by both of the co-convicts, and, also when they led to the making of the apposite recoveries at their respective instances, to the investigating officer concerned. In consequence, sanctity is to be meted to the above drawn memo(s).

46. Though the assigning of sanctity thereto, would become waned only, when they had ably denied, the existence of their respective signatures thereon, and or, had efficaciously proven that the relevant recoveries, were engineered, or, contrived thus through a

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clever strategem being deployed by the investigating officer concerned, but yet a reading of the deposition of PWs concerned, does not reveal, that the above possible exculpatory pleas, hence for negating the evidentiary worth of the above drawn memo(s), rather becoming either raised or becoming efficaciously proven.

Medical Evidence

47. The doctor who conducted an autopsy on the body of the deceased stepped into the witness box as PW-7. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures. The post mortem report is assigned Exhibit PF/1. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

Injuries found on the person of Parshadi Lal :

i. A incised wound was present over the forehead horizontal 6.5 x 1.8 cm underlying bone was cut and fractured and putrified brain matter was coming out of.

ii. There was incised wound below the lower lip over the left side of chin 4.5 x 1.6 cm underlying mandible was cut and fractured.

iii. Incised wound on the trachea over neck of left side 3.6 x 1.3 cm underlying trachea was cut and open.

iv. A contused swelling and present over left side of face. On dissecting it, sub cutaneous echymosis was present.

V. Multiple contusions were present over upper arm and forearm. Sub cutaneous echymosis was present."

Injuries found on the person of Mst. Prem Devi:

1. There was a cut lacerated wound over the fronto parietal region of skull 8cm x 2cm underlying bone was

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fractured and cut and a cut was present on it. Depth of injury cannot be ascertained because brain matter was liquified due to putrifaction.

ii. There was a incised stab wound over the abdomen right side detailed as below:

3 cm x 1 cm on the lower outer front of right side of chest.

-3 cm x 1 cm over the right middle front of abdomen and 5 cm below the costal margin.

3 cm x 1 cm x 2 cm behind the injury 2(ii). Abdominal cavity was containing blood and intestines were injured. Right lung was collapsed and was having a cut to lower lobe. Rest of the organs showed changes of putrifaction.”

48. He has also during the course of his examination-in-chief, proven that the cause of demise of the deceased Parshadi Lal was owing to *injuries to the vital organ i.e. brain and traches leading to shock and hemorrhage*, whereas, the cause of demise of deceased Prem Devi was due to *hemorrhage and shock because of injuries to the head, lungs and intestines*.

49. In addition, the Investigating Officer had produced the weapons of offence before PW-7, for obtaining an opinion as to whether the injuries found on the dead bodies of the deceased could have been caused by the weapons, recoveries whereof, became effectuated by the accused in pursuance to their respective disclosure statements, whereupon, the doctor concerned has opined as under :

“ The possibilities of the injuries mentioned in the dead bodies of deceased vide PMR No. VK 31/3200 and PMR No. VK 32/2000 dated 3.11.2000 by the above mentioned weapons cannot be ruled out.”

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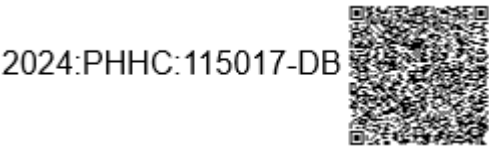
50. The above rendered un-rebutted medical account with respect to the cause of demise of the deceased whereby, the recovered incriminatory weapons of offence become pronounced to cause the fatal ante mortem injuries, as existed on the body of the deceased, thus thereby able corroboration becomes lent to the theory of '*last seen*' propagated by PW-8, besides ensures corroboration becoming rendered to the memo(s) (supra), respectively, enclosing therein the respectively made signed disclosure statements and the consequent theretos recoveries, as became effected at their respective instances to the investigating officer concerned.

Argument as to delay in lodging of the FIR.

51. The argument of the learned counsel for the appellant(s) that there was a delay in lodging of the FIR, does not find favour with this Court. The reason being that the FIR was lodged by Mohinder at 01.30 PM and the special report was delivered to the learned Illaqa Magistrate at 3.30 PM. Since the FIR was to be locally delivered, thereby the said delay of two hours is well explained.

52. Moreover, the argument that the testimony of DW-3 HC Dinesh Kumar reveals that Ex.PH, which is an application for getting the post mortem of deceased has been scribed by the Investigating Officer on 02.11.2000, whereas, the factum of the murder was brought to the notice of police on 01.11.2000 itself. As such, a deep suspicion imbues the genesis of the prosecution case.

53. However, the said argument is rejected. The reason being that on the first page of post mortem report Ex.PJ, it became recorded



by the Medical Officer concerned, that the death of the deceased had been reported to the police on 03.11.2000 at 1.30 P.M., and, the post mortem of the deceased was conducted on 3.11.2000 at 4.30 P.M. Therefore, the above recording of date as 02.11.2000 by the Investigating Officer concerned but is a mere typographical error.

Final Order of this Court.

54. In consequence, there is no merit in both the appeals, and, they are dismissed. The impugned verdict of conviction, and, consequent therewith sentence(s) (supra) are affirmed and maintained.
55. If the convicts (supra) are on bail, thereupon, the sentences(s), as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.
56. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.
57. Since the main case(s) itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.
58. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

31.08.2024
kavneet singh

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