

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D No. 749-DBA of 2002(O&M)

Date of Decision: April 10 , 2015.

State of Haryana

..... APPELLANT (s)

Versus

Jasbir @ Jassa and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Vivek Saini, AAG, Haryana
for the appellant-State.

Mr. Sudhir Sharma, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the State of Haryana impugning judgment dated 06.02.2002 passed by the learned Additional Sessions Judge, Gurgaon whereby respondents-accused have been acquitted of the charges under Sections 364/302/201/392/34 IPC.

Brief facts of the case are that, Madan Singh (deceased) was the brother of complainant – Om Parkash. He was a Taxi Driver and went missing on 06.07.1993. DDR (Ex.PW10/A) was entered on 19.07.1993 at 5.30 p.m. at Police Station City Gurgaon on the statement of Om Parkash (PW22) to the

effect that his brother Madan Singh was present at the Taxi Stand, Gurgaon on 06.07.1993 at about 8.00/9.00 a.m. Two persons hired his Taxi on 06.07.1993 in the morning. Since then his brother Madan Singh had not returned. Deceased was described to be 23 years of age, dusky complexion having a thin body inflicted with stammer having a height of 5' 2". He was wearing trouser and a shirt. DDR (Ex.PW18/A) was registered at 6.30 p.m. on 19.07.1993 at Police Post Pinangaon on the basis of a statement of Deen Mohammad Khan who disclosed himself to be a resident of Shah Chokha and when he was going for his evening walk at about 5.00 p.m. along the bank of Shah Chokha drain, he saw a gunny bag in the drain near the bridge (Pulia). Several dogs were sitting around the gunny bag. He saw bones of human feet protruding out of the gunny bag as well as a white shirt and pant in the bones. He suspected the body to be 10-15 days old. A number of people gathered at the spot.

Police party headed by ASI Balbir Singh proceeded to the spot. Inquest report was prepared and the dead body was sent to Medical Officer, Civil Hospital Nuh. Body being completely decomposed was sent to Department of Forensic Medicines, Medical College and Hospital, Rohtak for conducting the post-mortem examination. Post-mortem was conducted on 21.07.1993 by PW16 Dr. P.K.Paliwal. Post-mortem report is Ex.PW16/B. The information rendered is as under:-

“OPINION

1. The bones were human in origin
2. They belong to same individual
3. Sex was male
4. Age was about 35 years
5. Stature was about 5' 6"
6. Cause of death could not be ascertained

7. No bony injury was found on available bones.
8. Duration between death and post mortem examination was about 1 to 2 weeks.”

As per the post-mortem examination it was revealed that only some of the bones were present and the opinion rendered is as under:-

“Only following bones were present

1. Skull
2. vertebrae Thoracic 8 to Thoracic 12 and Ist and IInd lumber in a column
3. Sacrum
4. Both hip bones -(2)
5. Both Femora – (2)
6. Both side Tibia and Fibula (4)

Rest of the bones were missing.”

Cause of death could not ascertained. Recovered trouser and underwear from the dead body were sealed in parcels by PW16 Dr. P.K.Paliwal and were handed over to the police.

After a period of over one year, secret information was received by SI Surender Nath Singh (PW21) police station Modi Nagar (U.P.) on 19.09.1994 that a stolen Maruti car was lying parked in the house of Jai Ram Singh in Mohalla Begmabad, Modi Nagar. Car was informed to be purchased by Rakesh Kumar from accused Jasbir. Police party headed by PW21 SI Surender Nath Singh proceeded to the house of Jai Ram Singh but neither he nor his son Rakesh Kumar were found present. Female members of the family informed that Rakesh was present at Mohalla Tibra road. PW21 SI Surender Nath Singh recovered the RC of the car (Ex.P1) from the Almirah of Jai Ram's house. Police party thereafter left for Tibra road where Rakesh (PW4) was found present with the car. On seeing the police party Rakesh fled from the

spot. Car was taken in possession vide memo Ex.PW20/B.

As per the Registration Certificate (Ex.P1), the car was originally registered in the name of M/s K.B.Builders and Fabricolours, Mandi Gurdaspur and thereafter, transferred in the name of PW7 Daya Nand (father of the deceased) resident of Bharthal Bijwason, New Delhi. Car was brought to police station Modi Nagar and DDR No.57 dated 19.09.1994 (Ex.PW20/A) was registered. Intimation about the recovery of car was sent to police station City Gurgaon on 20.09.1994. PW7 Daya Nand went to the police station Modi Nagar and informed PW21 SI Surender Nath Singh that the said car belonged to him. DDR PW10/A was produced. Formal FIR (Ex.PW10/B) was registered under Section 364 IPC on 27.09.1994 at police station City Gurgaon by PW10 ASI Hoshiar Singh.

Investigation of the case was handed over to SI Kanhiya Lal PW19 police station City Gurgaon. On coming to know that accused Jasbir, from whom the car was stated to be purchased by Rakesh, was in custody at Meerut, warrant of his production was obtained on 31.10.1994 in connection with the present case. Jasbir was formally arrested on 10.11.1994 and interrogated on the same day by PW19 SI Kanhiya Lal.

Accused Jasbir suffered a disclosure statement (Ex.PW19./A) in the presence of constable Devinder Kumar and Om Parkash (PW22) wherein he disclosed that on 06.07.1993 he alongwith Rishi Pal hired a Maruti Car No. PAE-1290 at 11.00 a.m./12.00 noon for going to Hariahera. On reaching the house of Narender all three of them consumed liquor and turned up the volume of the tape-recorder. All three put a rope around the neck of driver Madan

Singh and killed him. Thereafter, his dead-body was thrown in the Gurgaon canal after putting it in a gunny bag. Narender was dropped at Ballabhgarh. Jasbir and Rishi Pal got the colour of car changed at Delhi and went to village Sikri. This car was sold to Rakesh Kumar son of Jai Ram. Money was distributed amongst all the three accused persons. An altercation took place between him and Rishi Pal on account of the transfer of documents of the car. He disclosed to Rakesh Kumar that this car was purchased from village Bharthal. Rakesh Kumar went to village Bharthal and in this manner their secret was leaked out. Pursuant to the disclosure statement, accused Jasbir pointed out the alleged place of murder of Madan Singh and place of disposal of dead body as well as the shop of painter from where the colour of the car was changed (Ex.PW21/A and PW21/B).

Accused Narender suffered an extra judicial confession before Mehar and Partap Singh confessing to the commission of murder of Madan Singh. They produced him before the police and he was arrested on 02.12.1994. Thereafter he suffered a disclosure statement (Ex.PC) on 03.12.1994 unfolding the events leading to the death of Madan Singh. Similar facts as stated by Jasbir were revealed by him. He confessed to receiving a sum of ₹2,000/- after the sale of the car. He retained one wrist watch and an amount of ₹3,000/- recovered from the bag of the deceased as well as a pair of shoes. Pursuant to his disclosure, he got recovered a pair of shoes hidden in the bushes as well as a wrist watch belonging to the deceased. He pointed out the place of murder and disposal of dead-body of Madan Singh.

Rishi Pal was arrested on 07.01.1995. On interrogation by SI Ram

Chander, he suffered a disclosure statement similar to the disclosure statements of the co-accused. He also pointed out the site of murder and disposal of dead-body of Madan Singh. On interrogation by PW17 Ranbir Singh again on 10.01.1995, he revealed that the car was repainted from one Zakhmi painter at New Delhi. He pointed out the shop of painter (Ex.PW17/B).

SI Ram Chander went to Police station Punhana on 04.12.1994 and obtained the parcels of clothes in respect to dead body/its remains which was recovered on 19.07.1993. He went alongwith PW14 Jai Singh and PW22 Om Parkash, who identified the clothes i.e., one greyish pant and an underwear to be that of Madan Singh. Clothes were again resealed in a parcel with seal 'RCK' by SI Ram Chander. Certificate of Guarantee in regard to the purchase of HMT watch (make Chirag) on 14.12.1981 and allegedly worn by the deceased was taken in possession vide Ex.PW13/A on 18.11.1994 by SI Ram Chander from PW13 Deepak Bhardwaj.

Charges were framed against respondents-accused who pleaded innocence and claimed trial.

Prosecution examined as many as twenty three witnesses to prove its case.

Statements of the accused persons were recorded under Section 313 Cr.P.C. Accused Jasbir while pleading innocence and false implication submitted that he had nothing to do with the car in question or murder of Madan Singh. He was transferred from Meerut Jail and falsely involved after fraudulently preparing documents. He denied ever having made any disclosure statement or getting anything recovered or pointing out to any place. All

documents alleged to be prepared at his instance were stated to be false and fabricated. No evidence in defence was however led. The other accused have also got recorded their statements on similar lines.

Learned Additional Sessions Judge, Gurgaon on perusal of the facts and circumstances as well as the evidence on record concluded that the prosecution has failed to prove its case beyond reasonable doubt. The case resting entirely on circumstantial evidence, it was held that prosecution was unable to complete the chain of events to link the respondents-accused with the alleged offence. Thus, all the accused were acquitted giving benefit of doubt.

Aggrieved by the said judgment, present appeal has been preferred by the State of Haryana against acquittal of the respondents-accused.

Learned counsel for the State vehemently argues that overwhelming evidence has been produced on record to connect the respondents-accused with the commission of offence as alleged. First and foremost, it is submitted that last seen evidence points to the complicity of the accused persons. Accused Jasbir and Rishi Pal were last seen by complainant Om Parkash (PW22) on 06.07.1993 with the deceased. Thereafter, deceased Madan Singh went missing.

Dead body/its remains recovered on 19.07.1993 are proved to be that of Madan Singh. It was duly identified by Om Parkash (PW22) on the basis of the clothes i.e., trouser and underwear.

It is submitted that receipt (Ex.PA) dated 21.03.1994 executed by accused Jasbir regarding sale of car to Rakesh Kumar PW4 taken in possession by SI Ram Chander on 03.01.1995 from PW4 Rakesh Kumar, duly proves the

complicity of the accused persons especially when coupled with the last seen evidence. This receipt is duly signed by accused Jasbir purporting the sale of the said Maruti car for a sum of ₹60,000/-, a sum of ₹27,000/- having been received on 21.03.1994 and ₹33,000/- to be paid after obtaining NOC and transfer of the car. Said receipt is witnessed by Vijender Pal Singh (PW3) and Devinder Singh and one Kanwar Pal Singh.

Learned counsel for the State further argues that Narender suffered an extra-judicial confession admitting the offence committed by him and his co-accused before PW1 Mehar Singh and PW2 Partap Singh, who have duly supported the prosecution version. Narender also got recovered a wrist watch (Ex.P1) belonging to the deceased as proved by the Certificate of Guarantee. He also got discovered the shoes of deceased Madan Singh.

Rishi Pal who was arrested on 07.01.1995 also pointed out the place of alleged offence as well as disposal of dead body. He further pointed out the shop of painter (Ashok Zakhmi) where the accused allegedly got the colour of the car changed. PW7 Daya Nand and PW17 Ranbir Singh prove the same.

In this manner, it is submitted that the chain of events pointing to the abduction and murder of Madan Singh by all the accused persons is complete. He argues that the learned trial court has erred in ignoring cogent evidence on record. Therefore, acquittal of the accused should be set aside and they should be convicted and sentenced for the offences as charged.

Learned counsel for respondents-accused while refuting the above arguments submits that their acquittal has been rendered by the trial court as the

prosecution has failed to lead any coherent evidence to connect respondents-accused with the alleged crime.

Last seen evidence in the form of the statement of PW22 Om Parkash is not reliable at all. Report regarding missing of Madan Singh was itself lodged after a considerable delay. Dead body/its remains are not proved to be that of deceased Madan Singh. Identification of the same on the basis of clothes is clearly not made out in the present case. Attempt by the prosecution to connect the accused on the basis of receipt (Ex.PA) is equally fallacious. Alleged disclosure statements made by the accused are inadmissible in evidence. Witnesses PW1 Mehar Singh and PW2 Partap Singh are proved to be interested witnesses. No reliance can be placed on their testimonies. Therefore the impugned judgment deserves to be upheld.

We have heard learned counsel for the parties and gone through the record.

A perusal of the record shows that the sequence of events came to the fore only after the recovery of the car from PW4 Rakesh Kumar. Missing report of Madan Singh was lodged on 19.07.1993 on the statement of PW22 Om Parkash. PW22 Om Parkash stated that two persons, whom he later identified to be accused Jasbir and Rishi Pal, had hired his brother's taxi on 06.07.1993. Thereafter, deceased Madan Singh went missing. In respect to the recovery of dead body, DDR No.57 dated 19.07.1993 (Ex.PW18/A) was lodged at Police Post Pinangaon on the basis of statement of Deen Mohammad.

There was no headway in the matter for over one year. It was on secret information received by SI Surender Nath Singh (PW21), Police Station

Modi Nagar (U.P.) that Maruti car belonging to the deceased's father Daya Nand was recovered from Rakesh Kumar (PW4) on 19.09.1994 which lead to further investigation. On intimation about the recovery of the car being sent to Police Station City Gurgaon, PW7 Daya Nand went to Police Station Modi Nagar and informed PW21 SI Surender Nath Singh that the said car belonged to him. It is thereafter that FIR (Ex.PW10/B) was registered under Section 364 IPC on 27.09.1994 at Police Station City Gurgaon. At this stage also there was no suspicion of the accused having murdered Madan Singh.

It was disclosed by Rakesh Kumar (PW4) that said Maruti car was purchased by him from Jasbir @ Jassa (respondent No.1). It is thereafter that efforts were made to arrest accused – Jasbir @ Jassa in the present case. He was found to be in custody in another case at Meerut and was formally arrested on 10.11.1994. It is on interrogation by PW19 SI Kanhiya Lal on 10.11.1994 that accused Jasbir @ Jassa suffered a disclosure statement (Ex.PW19/A) wherein he revealed the entire sequence of events leading to the murder of Madan Singh.

Argument of learned counsel for the respondents that this disclosure statement has no evidentiary value having been suffered in police custody, is misplaced. Receipt (Ex.PA) executed by Jasbir @ Jassa in respect to the sale of Maruti car in favour of Rakesh Kumar clinches the issue. Doubtlessly accused have sought to explain the receipt by alleging that it was got signed from Jasbir @ Jassa under duress while he was in police custody. It has also been urged that in case this receipt was there, there would be no reason why Rakesh Kumar did not present it till 03.01.1995. This argument is

fallacious and misplaced in view of the positive testimony PW3 Vijender Pal Singh son of Dilabar Singh who has scribed and attested the receipt. His testimony reads as under:-

“Deposition and information of Vijender s/o Shri Dilabar Singh, aged 40 years, Service, resident of village Patla, District Ghaziabad (U.P.) has taken before me, who on oath said:-

I know accused Jasbir who is present today. On 21.03.1994 Rakesh son of Jai Ram purchased a Maruti car PAE/1290 from accused Jasbir worth ₹60,000/-. ₹27,000/- was to be paid in cash and the remaining amount of ₹33,000/- was to be paid at later stage after the completion of full paper regarding the purchase of the said car, and transferred thereof. A receipt Ex.PA was scribed by me. It was signed by Kanwar Pal at point -A, Devi Singh at point -B and at point -C by the purchaser, at point -D by Jasbir accused, at point -E myself. I handed over the receipt Ex.PA to the purchaser Rakesh Kumar. **Jasbir accused is the same person who has signed the receipt regarding the sale of vehicle.**

Cx x x x by Shri N.K.Jain, Adv. for accused Jasbir

Nil (opportunity given)

Cx x x x by Shri S.P.Gupta, Adv. for Narender

Nil (opportunity given)”

Despite opportunity, this witness has not been cross-examined by the defence. There is nothing on record as to why this witness would falsely implicate the accused. Learned trial court has gravely erred in disregarding this vital evidence on the premise that PW4 Rakesh Kumar has deposed that this receipt was scribed by one Jai Pal Pradhan. A perusal of Ex.PA reveals that it was duly signed by Vijender Pal Singh. Vijender Pal Singh has duly identified Jasbir @ Jassa to have executed the said document. In the absence of any

cross-examination, the argument that the receipt was got executed in police custody falls to the ground.

The abovesaid fact is coupled with the evidence of PW22 Om Parkash. He has identified accused Jasbir @ Jassa and Rishi Pal to be the two persons who had hired his brother's taxi on 06.07.1993 pursuant to which his brother went missing. He has identified both the accused in court.

Contention of the learned counsel for respondents that there is no identification of the said accused, is rejected in the light of the facts as narrated above. It is clear that presence of the abovementioned two accused has been mentioned at the very outset by Om Parkash. Absence of their description in the said DDR cannot be fatal to the prosecution case. Receipt (Ex.PA) coupled with the last seen evidence, in fact, completes the sequence of events pointing to the guilt of the accused persons.

Prosecution case is further corroborated by the extra-judicial confession made by Narender (respondent No.3) before PW1 Mehar Singh and PW2 Partap Singh. PW1 Mehar Singh and PW2 Partap Singh have supported the prosecution version. It is revealed by Mehar Singh that Narender is a resident of an adjoining village. Narender (respondent No.3) was produced before the police by Mehar Singh and Partap Singh. Their statements revealing the confession made by Narender before them was duly recorded on 02.12.1994 when he was arrested. Contention that there was no occasion for Narender to have made the statement before the abovesaid persons is not a ground for discarding the same. It has come on record that Narender belongs to an adjoining village of Mehar Singh and Partap Singh. Therefore, possibility of

his disclosing the commission of offence before them is not unnatural. The abovesaid witnesses being related to the deceased, even if true, does not create a dent in the prosecution version for the simple reason that the said witnesses had no axe to grind against the accused. There is no reason as to why they would implicate the accused falsely. There is no such evidence or cross-examination to this effect.

Pursuant to the disclosure statement, Narender got recovered a wrist watch (Ex.P1) and shoes (Ex.P2 and Ex.P3) belonging to the deceased. Certificate of guarantee in regard to purchase of HMT watch worn by the deceased was taken in possession vide Ex.PW13/A on 18.11.1994 by SI Ram Chander. PW13 Deepak Bhardwaj not supporting the prosecution version is not material and relevant in the light of other overwhelming evidence which is sufficient to inculcate the accused. Trial court has grossly erred in concluding that there is no evidence to connect any of the accused with the commission of offence.

Accused – Rishi Pal arrested on 07.01.1995 was duly identified by PW22 Om Parkash as one of the persons to be last seen with the deceased. Rishi Pal and Jasbir @ Jassa had hired the deceased's taxi. Inability of the prosecution to produce the painter, namely, Ashok Zakhmi, who allegedly repainted the taxi, is not fatal to the prosecution case.

Finding of the trial court that dead-body/remains recovered on 19.07.1993 are not proved to be that of Madan Singh is also misconceived. As per the post-mortem report, there were skeletal remains with soft tissues and skin present only in the perineal region. As per the doctors' opinion, the bones

were human in origin belonging to a male person aged about 35 years having height of 5' 6". Cause of death could not be ascertained and no bony injuries were found on the available bones. Duration between death and post-mortem examination was one to two weeks. Madan Singh had been missing since 06.07.1993 and the dead-body/remains were recovered on 19.07.1993. Identification of the dead-body/remains was carried out by PW14 Jai Singh and PW22 Om Parkash on the basis of clothes contained in parcels Ex.P4 and Ex.P5. Finding of the trial court that changes have been made in the clothes of the dead-body is not borne out from the evidence on record. SI Ram Chander had passed away before he could be examined in court. Similarly, Deen Mohd could not be examined as he had passed away. Disbelief by the trial court in regard to evidence of PW14 Jai Singh and PW22 Om Parkash supported by PW8 Siri Chand in respect to the clothes of the deceased and their identification, is unjustified. There is no evidence whatsoever on record to disbelieve the evidence of the abovesaid two witnesses.

Averment of learned counsel for respondents that Madan Singh was described to be 23 years old having a height of 5' 2" whereas, the doctors have opined the dead-body/remains to be that of a person of 35 years having a height of 5' 6" cannot be of any help to the accused. It is a matter of record that this opinion is an approximation arrived at by the doctors. The age of the bones has not been tested. Difference of 4" in the height is possible in view of the facts and circumstances of the case where all the bones have not been recovered and is not material.

There is sufficient evidence on record to prove that accused Jasbir

@ Jassa and Rishi Pal had hired the taxi of deceased Madan Singh on 06.07.1993. Both the accused alongwith Narender had done Madan Singh to death at the residence of Narender. His dead-body was thereafter thrown at the Gurgaon Canal after putting it in a gunny bag. Maruti car was sold to Rakesh Kumar for a sum of ₹60,000/- as is evident from receipt Ex.PA. Consideration amount being mentioned as ₹60,000/- cannot take away the veracity of the prosecution version, keeping in view the fact that admittedly it was ₹27,000/- which was actually handed over to the accused. Rest of the amount was to be paid after the transfer of car in Rakesh Kumar's name. This car was sold by accused Jasbir @ Jassa to PW4 Rakesh Kumar. The sale of car of the deceased's family by Jasbir @ Jassa to Rakesh Kumar completes the chain of circumstances of hiring of car by Jasbir @ Jassa and taking life of Madan Singh before the car was sold. Therefore, it is proved on record that Madan Singh was murdered by respondents-accused with the motive of snatching his car and selling it for consideration.

The chain of events pointing to the guilt of the respondents-accused is complete. There is no missing link which casts a doubt on the prosecution version. Doubtlessly a judgment of acquittal is not to be interfered with until and unless substantial and compelling reasons are pointed out. It cannot be set aside because merely another view is possible on the basis of evidence on record. In the present case, perusal of evidence on record does not point to any other hypothesis except the guilt of respondents-accused. In these circumstances, the trial court has grossly erred in acquitting the respondents-accused of the charges framed against them. Prosecution has succeeded in

proving the case against the accused beyond reasonable doubt.

Keeping in view the facts and circumstances of the case, impugned judgment dated 06.02.2002 passed by learned Additional Sessions Judge, Gurgaon acquitting respondents – Jasbir @ Jassa, Rishi Pal and Narender is set aside. All the three respondents-accused are convicted for the offences punishable under Sections 364/302/201/392 read with Section 34 IPC. Respondents-accused, namely, Jasbir @ Jassa, Rishi Pal and Narender are sentenced as under:-

<i>Offence U/s</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Imprisonment in default of Payment of fine</i>
302/34 IPC	To undergo rigorous imprisonment for life	₹5,000/-	To further undergo rigorous imprisonment for three months
364/34 IPC	To undergo rigorous imprisonment for ten years	₹5,000/-	To further undergo rigorous imprisonment for three months
392/34 IPC	To undergo rigorous imprisonment for seven years	₹2,500/-	To further undergo rigorous imprisonment for two months
201/34 IPC	To undergo rigorous imprisonment for three years	₹2,000/-	To further undergo rigorous imprisonment for one month

All sentences to run concurrently.

Learned Chief Judicial Magistrate, Gurgaon is directed to take necessary steps to take the respondents in custody.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

April 10 , 2015.
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