

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-D-962-DB of 2009**

DATE OF DECISION: JANUARY 21, 2015

SUNIL KUMAR & ANOTHER ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

2. **CRA-D-444-DB of 2010**

ARJAN KUMAR @ ANIL & ANOTHER ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. RAMNEEK VASUDEVA, ADVOCATE
FOR APPELLANT NO.1 IN CRA-D-962-DB OF 2009.

MR. G.S.SAHNI, ADVOCATE
FOR APPELLANT NO.2 IN CRA-D-962-DB OF 2009.

MS. DIVYA SHARMA, ADVOCATE
FOR APPELLANT NO.1 IN CRA-D-444-DB OF 2010.

MR. P.P.S.THETHI, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Out of 7 accused who were charge-sheeted, accused Sarju was declared as Proclaimed Offender, accused Rajesh Kumar and accused Kusma Devi were acquitted. All the other 4 accused, Sunil Kumar, Satish Kumar, Arjan Kumar @ Anil and Mulakh Raj @ Mulkhu were convicted under Section 120-B, 396 and 411 IPC. They have preferred these two

appeals challenging the conviction and sentence recorded by the trial Court.

2. It is the case of the prosecution that on 23.1.2008 at about 5.00 p.m., accused Arjan Kumar @ Anil Kumar who was employed as a domestic help-cum-cook by deceased Bhupinder Singh, entered into a criminal conspiracy with other accused including the accused-appellants herein and committed murder during the course of committing dacoity and retained the booty with them.

3. PW3 Sandeep Kaur was the daughter-in-law of deceased Bhupinder Singh and Gurmit Kaur. She was residing alongwith her husband and child in the house of her father-in-law Bhupinder Singh. She has deposed that her father-in-law employed accused Arjan Kumar @ Anil as domestic servant about two days prior to the Lohri festival of the year 2008. The servant was referred by Gosal, the friend of deceased Bhupinder Singh. Accused Sarju, Satish, Mulkha and Sunil used to come and meet Arjan Kumar @ Anil at the residence of the deceased. PW14 Sarabjit Singh was the son of the deceased Bhupinder Singh and Gurmit Kaur, the husband of PW3. Accused Arjan Kumar @ Anil asked PW14 to secure some employment for the above accused. Deceased Bhupinder Singh and Gurmit Kaur got annoyed with Arjan Kumar @ Anil due to the frequent visits of the other accused who were his friends. Gurmit Kaur infact snubbed them for their frequent visit to the house of the deceased.

4. PW3 has further deposed that on 23.1.2008 at about 2.30 p.m. when she was sitting in the lawn with her mother-in-law Gurmit Kaur, accused Mulakh Raj and Sarju came to her house and rang the door bell. Accused Arjan Kumar @ Anil opened the gate for them. Arjan Kumar @

Anil brought Sarju and Mulakh Raj to the lawn where PW3 and the deceased Gurmit Kaur were sitting. Gurmit Kaur got annoyed and warned them not to disturb during lunch hours. Thereafter, Anil Kumar went inside the house, whereas Mulakh Raj and Sarju went away. She also spotted the accused Satish and Sunil standing outside her house at a distance across the road when she was engaged in closing the gate. After attending the work in the factory owned by Bhupinder Singh, he came back to the house. He proceeded to the bedroom complaining of some back pain. The daughter of PW14 and PW3 came back from school. She dropped her daughter at the house of PW2 Harmanpreet Singh whose father and deceased Bhupinder Singh were brothers. She came to her bedroom for taking rest. Thereafter, she went to her bedroom and went to sleep. She woke up at 4.30 p.m. and proceeded towards the house of PW2 to bring her daughter back. At that time, she saw accused Arjan Kumar @ Anil, Satish, Sunil, Mulakh Raj and Sarju with her father-in-law in the lawn. Her father-in-law was scolding them for the accused had been visiting his house too often. He had asked them to leave and not to come again. She identified all the four accused as the persons who were scolded by her father-in-law just before the occurrence. Thereafter, she proceeded to the adjoining house to bring back her daughter. She spent about 20 minutes in the adjoining house. After returning to her house, she started preparing milk for her daughter. Thereafter, she proceeded to her bedroom with her daughter. At that time, she found that the door of the room of her father-in-law was closed.

5. PW2 who is the complainant has spoken about the employment of accused Arjan Kumar @ Anil as male servant by deceased Bhupinder

Singh. He further deposed that other accused also used to visit the house of deceased Bhupinder Singh. They also asked PW14 Sarabjit Singh to make arrangement for their employment. On 23.1.2008, when he was returning from his shop at about 5.00 p.m., he found accused Arjan Kumar @ Anil alongwith other accused. They were looking nervous and puzzled. Accused Anil Kumar was carrying a bag in his hand. Thereafter, he enquired from PW3 Sandeep Kaur about the whereabouts of their servant Arjan Kumar @ Anil. PW3 proceeded to the room of her uncle Bhupinder Singh and found to her surprise that Bhupinder Singh and his wife Gurmit Kaur were lying dead in a pool of blood. Incised wounds were found on the neck of deceased Bhupinder Singh. Gurmit Kaur had been done to death by strangulation. PW2, PW3 and PW14 found that cash amount of ₹1,50,000/-, 2 mobile phones, 4 gold chains, 10 gold bangles, 1 diamond set, 2 pair of gold earrings, 2 gents gold rings and 2 ladies gold rings were missing.

6. PW4 Dr.Ashok Chanana conducted post mortem examination on the dead body of Bhupinder Singh on 24.1.2008 at about 12.15 p.m. and found the following injuries on his dead body:-

- “1. An oblique incised wound 7 x 2.5 cm with clotted blood was present obliquely on the front and upper part of neck.*
- 2. An oblique incised wound 10 x 2 cm with clotted blood was present on the front of neck, 1 cm below injury No.1.*
- 3. An oblique incised wound 12 x 1.5 cm with clotted blood was present on the front of neck 0.5 cm below injury No.2.”*

7. In his opinion, Bhupinder Singh had died due to asphyxia on account of above three injuries suffered by him which were sufficient to cause death in the ordinary course of nature.

8. He also conducted post mortem examination on the dead body of Gurmit Kaur on the same day at 11.10 a.m. and found the following injuries on her dead body:-

“1. A reddish brown abrasion obliquely placed 1 x 0.4 cm was present on the front and centre of neck.

2. A reddish brown abrasion obliquely placed 0.5 x 2 cm was present on the left anterolateral aspect of neck 5 cm. horizontally away from the centre and injury No.1.”

9. In his opinion, Gurmit Kaur had died due to smothering leading to asphyxia which was sufficient to cause death in the ordinary course of nature.

10. PW11 Maninder Singh, a jeweller, spoke about the jewellery polished and handed over to the deceased. PW22 SI Joginder Singh who was the investigating officer spoke about the arrest of accused Sunil Kumar and the recovery of gold bangle and one pair of ear stud on the basis of the disclosure statement suffered by accused Sunil Kumar. He also spoke about the arrest of accused Satish Kumar and recovery of a sum of ₹50/-, a gold bangle and gold kara on the basis of disclosure statement suffered by him. Accused Arjan Kumar @ Anil suffered a disclosure statement and on the basis of which one gold chain, an ear stud and a blood stained barber knife were recovered. A sum of ₹70/- and two gold bangles were recovered on the basis of the disclosure statement suffered by accused Mulakh Raj @

Mulkhu.

11. The accused have contended in their statements under Section 313 Cr.P.C. that they were innocent, but a false case was foisted on them.

12. The trial Court having relied upon the evidence of PW2, PW3 and PW14, in the background of the medical evidence and the FSL report returned a verdict of conviction and sentence as against the accused as stated supra.

13. Learned counsel appearing for the appellants would submit that only four persons have been convicted by the trial Court. Four persons cannot be convicted for murder committed during the course of dacoity. PW2 Harmanpreet Singh had made a marked departure during the course of deposition that he spotted all the accused immediately after the occurrence, whereas in the first information report, he had allegedly spotted the accused alongwith yet another person. It is his further submission that based on the alleged disclosure statement and the recovery effected from the accused, the accused cannot be convicted for the offence under Section 396 IPC. No test identification parade was conducted by the investigating official. Therefore, it is his submission that the accused-appellants are entitled to acquittal.

14. It is to be noted that accused Arjan Kumar @ Anil never disputed the fact that he was employed as a domestic servant-cum-cook by deceased Bhupinder Singh. PW3 Sandeep Kaur, the daughter-in-law of deceased Bhupinder Singh and Gurmit Kaur has categorically deposed that the accused-appellants Sunil Kumar, Satish Kumar and Mulakh Raj @ Mulkhu often used to come to the house of the deceased and disturb them.

The accused were snubbed not only by deceased Gurmit Kaur, but also by

deceased Bhupinder Singh. Even on the fateful day at about 2.30 p.m., PW3 had spotted all these persons at the lawn of deceased Bhupinder Singh who was scolding them for making frequent visits to his house. Just before the occurrence, she had spotted all the four accused in and around her house. PW14 Sarabjit Singh also had spotted all the accused in and around his house on the fateful day.

15. PW2 had, of course, stated in the first information report that accused Arjan Kumar @ Anil was found alongwith another person. But it is his version before the Court that all the other accused were found alongwith Arjan Kumar @ Anil when he was spotted at about 5.00 p.m. on the fateful day. Such a version of PW2 cannot be termed as material contradiction.

16. On the basis of the disclosure statement suffered by Sunil Kumar, gold bangle and one pair of ear stud had been recovered and a gold bangle and a gold kara had been recovered on the basis of the disclosure statement suffered by accused Satish Kumar. On the basis of the disclosure statement suffered by accused Arjan Kumar @ Anil, a gold chain, an ear stud and blood stained barber knife had been recovered from him and two gold bangles were recovered from accused Mulakh Raj @ Mulkhu on the basis of disclosure statement suffered by him.

17. The medical evidence would establish that deceased Bhupinder Singh had died on account of three incised wounds he received on his neck and deceased Gurmit Kaur had died due to strangulation.

18. Within a short gap, when PW3 was otherwise busy, both Bhupinder Singh and Gurmit Kaur had been done to death. One person could not have committed double murder within a short while. If the

murder of Bhupinder Singh and Gurmit Kaur had been committed successively, one would have definitely raised an alarm. Further, if one person had committed the murder with the barber knife recovered from accused Arjan Kumar @ Anil, both would have been done to death with incised wounds. So, it is quite clear that more than one accused was in fact involved in this occurrence.

19. All the accused had been loitering in and around the house on the fateful day. Had they not hatched a conspiracy to commit the robbery after murdering both the victims, they would not have been loitering in and around the house on the fateful day.

20. There was no explanation from the accused for the recovery of the gold ornaments at their instance based on the disclosure statements suffered by them individually. The FSL report would disclose that the barber knife recovered was found stained with human blood. No explanation was forthcoming from accused Anil Kumar as to how the barber knife recovered at his instance contained human blood.

21. Learned counsel appearing for the appellants referred to the decision of the Hon'ble supreme Court in **State of Rajasthan vs. Talevar and Another, 2011(5) RCR (Criminal) 771**, wherein it has been held as follows:-

“8. In the instant case, accused Kuniya was arrested on 24.12.1996 and silver glass and one thousand rupees were alleged to have been recovered on his disclosure statement on 29.12.1996. Again on disclosure statement dated 2.1.1997, a scooter alleged to have been used in the dacoity, was

recovered. Similarly, another accused Talever was arrested on 19.1.1997 and on his disclosure statement on 26.1.1997, two thousand rupees, a silver key ring and a key of Ambassador car alleged to have been used in the crime were recovered. Thus, it is evidence that recovery on the disclosure statements of either of the respondent/accused persons was not in close proximity of time from the date of incident. More so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficult. In such a fact situation, we reach the inescapable conclusion that no presumption can be drawn against the said two respondents/accused under Section 114 Illustration (a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime.”

22. That was a case where the accused were strangers to the witnesses. No identification parade was conducted and the witnesses also failed to identify the accused in the Court. Unimportant articles like silver glass, silver key ring and scooter which could be passed on from one person to another person without any difficulty, had been recovered on the basis of the disclosure statement suffered by the accused. Under such circumstances, the verdict of acquittal recorded by the High Court was upheld by the Hon’ble Supreme Court.

23. In the instant case, all the accused-appellants Sunil Kumar, Satish Kumar, Mulakh Raj @ Mulkhu were frequent visitors to the house of

the deceased. Accused Arjan Kumar @ Anil was already employed by the deceased in their house as a male servant. Therefore, it was not a case where the accused were strangers to the witnesses. Important gold ornaments had been recovered on the basis of the respective disclosure statements suffered by the accused. Further, the recovery of stolen property was not the only evidence available in this case. The prosecution has established in the instant case that all the accused had been snubbed by the deceased for their frequent visits. They had been spotted not only just before the occurrence, but also immediately after the occurrence by PW2, PW3 and PW14. Not only the gold ornaments, but also blood stained barber knife also had been recovered in this case. In view of the above, in our considered view, the ratio laid down in the aforesaid case would not apply to the case in hand.

24. Learned counsel appearing for the appellants cited yet another decision in ***Dhan Raj @ Dhand vs. State of Haryana, 2014(3) RCR (Criminal) 888***. That was a case where unimportant articles, namely, wrist watch and a brief case had been recovered from the accused on the basis of the disclosure statement suffered by them. There was no other evidence to corroborate the recovery of stolen goods. Therefore, it was held in the above decision that mere recovery of stolen goods is not sufficient to convict the accused. In our considered view, the above decision also would not apply to the special facts and circumstances of this case.

25. It is true that all the four accused were convicted and two other accused had been acquitted by the trial Court. The fact remains that accused Sarju has been declared as a Proclaimed Offender as he is at large. Though

conviction has been recorded as against the four accused who faced the trial, the involvement of accused Sarju also has been spoken to by these witnesses. Therefore, it cannot be legally contended that the four persons cannot be convicted under Section 396 IPC.

26. In our considered view, the trial Court has rightly convicted and sentenced the accused having thoroughly evaluated the evidence on record. We find that there is no merit in the appeals. Therefore, confirming the conviction and sentence passed by the trial Court, both the appeals stand dismissed.

(M. JEYAPPAUL)
JUDGE

January 21, 2015
Gulati

(DARSHAN SINGH)
JUDGE