In the High Court of Punjab and Haryana at Chandigarh

CRA-D-212-DB-2010 (O&M)
Date of decision: 19.11.2015

Budh Ram ..... Appellant

Vs.

State of Haryana ..... Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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

Argued by: Mr. Bijender Dhankhar, Advocate
for the appellant.

Mr. Vivek Saini, Assistant Advocate General, Haryana.

*****

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 15.12.2009 rendered by learned Additional Sessions Judge, Faridabad, whereby appellant Budh Ram was convicted for committing offence punishable under Section 364-A of Indian Penal Code (for short 'IPC') and 302 IPC whereas co-accused Mukesh and Shehjad were acquitted holding that the sole confessional statement of the co-accused is not sufficient to prove their involvement in the commission of aforsaid offence. Vide order of sentence dated 17.12.2009, appellant-Budh Ram was sentenced to undergo imprisonment for life alongwith fine of ₹2,500/- for committing offence punishable under Section 364-A IPC. In default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months. For

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offence under Section 302 IPC, the appellant-Budh Ram was sentenced to undergo imprisonment for life alongwith fine of ₹2,500/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months.

Brief facts of the case are like this; that on the statement of complainant (Ex.PG), the police machinery was set in motion. As per complainant, his son Mufeed, aged about 9 years, was kidnapped. Complainant was running a barber shop at Bus Stand Sirohi. That day, his son Mufeed had taken goats to the grazing ground. At about 5:30 P.M., a call was received at the mobile phone of complainant bearing No. 98133-17325. That call was attended by his daughter namely Mufeeda. Caller disclosed his name as Budh Ram and told that Mufeed was in his custody. He demanded a ransom of Rs. 5 lacs. This message was given by his daughter to him in the presence of villagers. All the villagers gathered there. After 15 minutes, i.e. at about 5:45 P.M., again a call was received on the aforesaid mobile phone and the same message was repeated. Complainant alongwith Hassan Mohd. Isamudin, Saadiq, Kamaal and others had gone to Bus Stand in search of his son. There at the hotel, one Arshad met them. He told the complainant that he had seen Budh Ram taking away Mufeed towards the hills and further that Mufeed had taken cold-drink at the hotel, on the offer of Budh Ram. On this information, they had gone to the hill area in search of Mufeed and found his dead body in the bushes. There were injury marks on his forehead and he was killed by way of throttling**.** Under these circumstances, the complainant expressed his belief that his son Mufeed was killed by Budh Ram. Shehjad and Mukesh were also involved in this crime as they were on visiting terms with each other and

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used to remain together. On this information, ASI Jagbir Singh made his endorsement Ex.PG/1 and sent the same to the police station for registration of the case, whereupon, formal FIR Ex. PM was registered. Spot was inspected alongwith complainant and others. Rough site plan of the place of occurrence was prepared. Dead body of Mufeed was found. A blood stained stone was also found placed on the chest of the deceased. That stone Ex.P9 was taken into possession vide memo Ex. PL. Photographs of the spot as well that of dead body were got obtained. An application Ex. PA/1 was moved to the doctor for post-mortem examination of the dead body. Inquest proceedings were completed.

On 25.10.2007, accused Shehjad and Mukesh were arrestted from their houses at 6:00 A.M. On the same day accused Budh Ram was also arrested from village Khori. On interrogation, accused Budh Ram suffered disclosure statement Ex. PH admitting his involvement alongiwith co-accused namely, Shehjad and Mukesh, in this crime and also disclosed in detail the circumstances which led to the kidnapping and killing of deceased Mufeed. As per accused Budh Ram, he lived as a tenant of Badam for 11 months. He further disclosed that after commission of this crime, he reached his house, situated in village Khori, by taking outer route from village Sirohi. When he reached at his house, he saw 5-6 persons standing outside his house at that time. He had kept concealed after switching off mobile phone which he had stolen and used for ransom, in the bushes near canal opposite his house. Thereafter, he himself had gone to the farm house of village Khori while hiding himself thinking that finding a suitable opportunity, he shall ran away alongwith his household articles. He further

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disclosed that he can give *nishandehi* of the place where he had killed Mufeed; of the STD from where he had stolen mobile phone and the place where he had kept hidden mobile phone and by leading the police to that place, can get aforesaid mobile phone recovered. Thereafter, accused gave *nishandehi* of the place of occurrence vide memo Ex. PJ. He also led the police party to the disclosed place and got recovered mobile phone No. 99920-35279 which was taken into police possession vide memo Ex. PM/2. Mobile phone of the complainant bearing No. 98133-17325 was also taken into possession vide memo Ex. PK. On completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused, they were charge-sheeted for committing offence punishable under Sections 120-B, 364-A and 302/34 IPC. After taking entire prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their innocence and false implication.

After hearing both the sides and appraising the entire material and evidence on record, the learned trial Court recorded the impugned judgment of conviction dated 15.12.2009 convicting appellant-Budh Ram for offence punishable under Sections 364-A and 302 IPC whereas co-accused were acquitted. Vide order of sentence dated 17.12.2009, appellant- Budh Ram was sentenced, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the appellant and learned State counsel besides going through the record of this case.

It is a case based upon circumstantial evidence. It is laid down

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in ***Padala Veera Reddy Vs. State of A.P, 1990 (2) RCR (Crl.) 26 (SC),*** that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

1) *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
2) *those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
3) *the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
4) *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

It was contended by learned counsel for the appellant-accused that except disclosure statement of accused Ex. PH, there is no other evidence on the file to connect the accused with this crime. Even this disclosure statement also does not establish the offence against the accused. The mobile phone No. 99920-35279 allegedly got recovered by the accused in pursuance with his disclosure statement from the disclosed place, is not in his name. It was in the name of Jakir Sheikh as per Investigating Officer ASI Jagbir Singh (PW19). This Jakir Sheikh was not joined in the investigations of this case. It was also contended by learned counsel for the

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appellant-accused that the evidence led by the prosecution is not consistent with the prosecution story. Even the statements of prosecution witnesses are contradictory to each other. There is contradiction in the statements of PW6 Badam, PW7 Hassan Mohd, PW8 Arshad, PW9 Surajmal, PW12 Rehmat, PW3 Isammuddin, PW14 Ameen, PW15 Mufeed, PW17 Jiley Singh and PW18 Mustafa Sheikh. From their contradictory statements, it is evident on record that the police officials had reached the spot before the dead body of Mufeed was recovered from the hill area. As such, complaint Ex. PG is not credible as this shows that the same was made to the police after recovery of deceased. So appellant-Budh Ram is entitled to acquittal.

The above contentions of learned counsel for the appellant-accused are devoid of any force as with the help of prosecution witnesses, examined in this case, prosecution has succeeded in brining home guilt of the accused. As the circumstantial evidence available on record is complete and incapable of explanation of any other hypothesis than that of guilt of the accused and further it is not only consistent with the guilt of the accused but also inconsistent with his innocence. Ex. PH is disclosure statement of accused. It is of course true that the confession made by the accused before the police is not admissible in evidence but the fact that the accused was earlier tenant of Badam for the last 11 months, can well be taken into consideration. Thus, accused was known to the complainant party. From perusal of complaint Ex. PG as well it becomes evident that accused Budh Ram as well his co-accused were known to Badam. In his disclosure statement, accused has given his avocation as that of Labourer who used to load stone from Sirohi hills in the dumper belonging to Sethi & Company.

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Badam as PW6 categorically stated that on 24.10.2007, Mufeed deceased came back from school at about 2:00 P.M, and, thereafter, he had gone out with the goats for the purpose of grazing them. Mufeeda, daughter of Badam, as PW15 categorically stated that on 24.10.2007, at about 5:00/5:30 P.M., she received a call on the mobile phone of her father. She attended that phone call whereby the caller told her that he had abducted her brother Mufeed and she must tell her father to bring ₹5 lac to 'Nuh Ke Gaddi'. He also gave a threat that in case of their failure to pay the money, her brother would be killed. Thereafter, she had taken the mobile phone to her father. Again her father received a call on that very mobile phone and the caller repeated the ransom call telling her father that he was having the custody of Mufeed and asked him to pay a ransom of ₹5 lac, whereupon her father said that he is a poor person and cannot pay such a huge amount and, thereafter, her father started crying. Crowd gathered at the spot and the call was disconnected. On this point, statements of PW6 and PW15 are consistent. Isamuddin (PW13) also corroborated the statements of PW6 Badam and PW15 Mufeeda on the point of receipt of ransom call at the mobile phone of complainant which was brought to the complainant by his daughter Mufeeda and further that PW6 Badam had expressed his inability to pay ransom money.

In order to connect that Budh Ram-accused gave ransome call on the mobile phone of complainant bearing No. 98133-17325, there is a statement of Mustafa Sheikh (PW18). He deposed that he was running STD shop at Khori Jamalpur in the year 2007. On 24.10.2007 at about 9:30 A.M., when he was present in his shop accused Budh Ram came to his

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shop. He had taken mobile phone from him to make a call. As many customers were present at his shop, therefore, after sometime, he noticed that Budh Ram had gone away alongwith his mobile phone bearing No. 99920-35279. He waited for him for a long time but when he did not turn up then he made a telephonic call on the aforesaid mobile number from his another phone bearing No. 98961-60013, in response to which Budh Ram said that that phone belongs to him and, thereafter, he switched off the phone. This witness also deposed during the course of his cross-examination that there was no landline number at his STD booth. Under these circumstances, if the accused had run away with the mobile phone of the STD booth, it is quite possible that the accused must have done so. Investigating Officer of the case, ASI Jagbir Singh, deposed that he had received details of call from DSP Crime by moving an application Ex. PR before him. Those call details pertain to mobile phone No.99920-35279 and 98133-17325. This call details is Ex. PS. It shows that from mobile phone No. 99920-35279, calls were made on mobile No. 98133-17325 between 5:47:25 PM to 5:50:57 PM on 24.10.2007. This very call detail further shows that from mobile No. 98961-60013 calls were made on mobile No. 99920-35279 at 10:47:19 AM and 10:50:04 A.M. On 24.10.2007. Thus, from this call details, the prosecution story is established on the file that when accused had run away with the aforesaid mobile phone of STD Booth, PW18 Mustafa Sheikh made two calls on the aforesaid mobile phone in order to find out his mobile phone which the accused had taken away. Of course, Investigating Officer deposed that mobile phone in question from which the ransom call was made is in the name of Jakir Sheikh, who was not

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joined in the investigations of the case, yet Investigating Officer further deposed that he had joined his brother Mustafa Sheikh in the investigations. Even otherwise, mobile phones might be in the name of some other persons yet there is no evidence on the record to show that these mobile phones were not used at the aforesaid STD Booth. As such, with the call details Ex.PS, prosecution has succeeded in showing that accused used mobile phone No. 99920-35279 after stealing the same from the STD Booth and then made the ransom call from that mobile phone on the mobile phone of complainant. The aforesaid mobile phone used by the accused in making the ransom call was later on got recovered by him from the bushes standing alongside canal in pursuance with his disclosure statement Ex. PH and the same was taken into police possession vide memo Ex. PM/2. Jagbir Singh, Investigating Officer, Surajmal (PW9) and Ameen (PW14) proved the factum of recovery of mobile phone from the possession of accused. Hassan Mohd (PW7) and ASI Jagbir Singh proved the disclosure statement of accused as Ex. PH. Recovery of aforesaid mobile phone No.99920-35279 from the possession of the accused connects the accused with this crime as he had used this mobile phone for making ransom call to the complainant.

Regarding last seen evidence that the deceased was seeing in the company of Budh Ram on 24.10.2007, there is statement of Arshad (PW8) available on the file. He deposed that Budh Ram came to the shop of Jiley Singh, blacksmith at about 2:30 PM on 24.10.2007. He again visted the aforesaid shop at about 4:00 PM alongwith Mufeed son of Badam. Budh Ram served Pepsi to Mufeed and, thereafter, he had taken him towards the hills. At about 6:00 P.M. Badam alongwith 3-4 other persons came in that

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area, when he inquired from him about Mufeed, he told him that his son had been taken towards hilly area by Budh Ram. Rehmat (PW12) also deposed that on 24.10.2007 at about 6:45 P.M. while he was going from Bus Stand towards mines, on the way Budh Ram met him. He was coming from hill side. Though, he did not support the prosecution case yet from his statement it stands established that even this person has proved the presence of accused in the area of hill side. Jiley Singh (PW17) also deposed that on 24.10.2007 he was present at his STD booth at about 4:00 P.M. At that time, at the shop of Om Parkash, the son of Badam namely Mufeed accompanied with Budh Ram was taking cold-drink. After having cold-drink, they left for the hills. Budh Ram used to work in the mines for extracting stones from the hills. During the course of his cross-examination he deposed that the shop of Parkash adjoins his STD booth. At that time, Arshad was also present at his shop. There was a big crowd at the shop of Parkash. Parkash was also present at his hotel. Mufeed was known to him. At about 4:00 P.M., when Mufeed and Budh Ram left the shop of Parkash and went towards hill, he revealed this fact to Badam. Arshad (PW8) and Jiley Singh (PW17) have been cross-examined but nothing material could be extracted from them to discredit their evidence. Thus, from the afore-discussion, it is established on the file that deceased Mufeed was last seen in the company of accused Budh Ram.

Dr. Lokveer (PW1) proved the post-mortem report of Mufeed as Ex. PA and gave the cause of death in this case as head injury i.e. Injury to brain which was ante-mortem in nature and was sufficient to cause death in the normal course of nature. Badam (PW6), ASI Jagbir Singh (PW19),

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Investigating Officer, proved the fact that stone Ex. P9 which was placed on the body of deceased and was stained with blood was taken into possession vide memo Ex. PL and this very stone was sent to FSL for examination where as per report FSL Ex. PF blood stains were found on the aforesaid stone besides shirt and pant of deceased. As such, the cause of death given by doctor in this case is also quite inconsonance with the prosecution case. As such, finding recorded by the learned trial Court after recording detailed judgment, taking into consideration each and every aspect of the case that the prosecution has been successful to prove that accused Budh Ram was involved in the kidnapping of Mufeed for the demand of ransom and that he committed murder of Mufeed son of Badam; is legal and we see no reason to interfere with this judgment.

For the reasons recorded above, finding no merit in this appeal. The impugned judgment of conviction dated 15.12.2009 and order of sentence dated 17.12.2009 are maintained.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

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