

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 27.04.2015

CRA No.224-DB of 2010

Rakesh & another

...Appellants

Versus

State of Haryana

...Respondent

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

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?

Present: Mr. Bijender Dhankhar, Advocate, for appellant No.1.

Mr. Surender Deswal, Advocate, for appellant No.2.

Mr. Vishal Garg, Addl. AG, Haryana, for the respondent-State.

HEMANT GUPTA, J.

The present appeal is preferred by Rakesh son of Dhan Singh and Bintu @ Vishal son of Kaluram against the judgment of conviction and order of sentence dated 14.01.2010 passed by the Sessions Judge, Gurgaon, whereby both the appellants were convicted for the offences punishable under Sections 302 and 201 read with Section 34 IPC and sentenced to undergo imprisonment as mentioned in the order of sentence.

The prosecution case was set in motion on 12.06.2009, when SI/SHO Parkash Chand, PS Bilaspur recorded the statement of Ajit Singh son of late Siri Chand, father of the deceased – Krishan. In his statement (Ex.PA), Ajit Singh stated that he has four sons and one daughter and that his third son Krishan Kumar, aged about 15 years, used to graze sheep and goats. He further

stated that on the intervening night of 7/8.06.2009 at about 11.00 PM, when he and his son Krishan Kumar were sleeping in front of his house, when Rajesh son of Dhan Singh, whose house is in front of his house, woke up his son Krishan and took him. He further stated that he asked Rakesh as to where he was taking Krishan, upon which Rakesh replied that they are going for a walk. He further stated that when both of them did not return back, he tried to search for his son Krishan as well as Rakesh, but in vain. He further stated that today i.e. 12.06.2009, he received an information to the effect that a decomposed dead body of a child was lying behind a blanket factory near the boundary wall of AMP factory. He went there and identified the dead body to be of his son Krishan. He stated that after murdering his son Krishan, Rakesh thrown his dead body here. On the basis of such statement, ruqa (Ex.PA/1) was sent to the Police Station for registration of an FIR around 1.40 PM. On receipt of ruqa, FIR (Ex.PA/2) was recorded by ASI Amir Singh.

Thereafter, SI Parkash Chand summoned the photographer and finger print expert at the spot, who conducted necessary proceedings. Apart from lifting blood stained earth, he also taken into possession bunch of hairs, two white condoms, chappal and an iron road. He also prepared rough site plan Ex.PU. After conducting the inquest proceedings (Ex.PR), he sent the dead body to the General Hospital, Gurgaon for post-mortem examination.

The post-mortem examination on the dead body of Krishan was conducted by PW-13 Dr. Vijay Pal Khanagwal, Professor, Department of Forensic Medicine, PGIMS, Rohtak on 13.06.2009 at about 1.30 PM. He found the following injuries:

- (1) A sharp cut of size 6.0 cm over the right parietal bone in sagittal plane situated at a level 10.0 cm away from midline and 5.0 cm posterior to the lateral end of right supraorbital

margin. The portion of parietal bone lateral to (beyond) thus cut alongwith the right temporal bone was missing. Infiltration of blood was seen in the trabeculae of bone along the cut.

- (2) A sharp cut of size 5.5 cm over the posterior part of parietal bones situated 7 cm posterior to vertex almost in transverse plane (slightly oblique along the coronal plane). It was lying for 3cm on the right parietal bone and 4 cm on the left parietal bone. The portions of parietal bone posterior to (beyond) this cut along with the occipital bones were lying separated. A bony fragment of size 6 x 3cm just anterior to this cut was found to be depressed towards the cranial cavity. Infiltration of blood was seen along the cut and its vicinity.
- (3) A sharp cut of size 7 x 2 cm over the frontal region of skull in transverse plane situated 4 cm away from midline on the right and 3 cm on the left and 5 cm above glabella. The sharp cut extended on either side of frontal region in form of fissured fracture in slightly oblique direction for 6.5 cm on the left side and 5 cm on the right side. Infiltration of blood was seen along the sharp cut as well as the fracture lines.

In his opinion, the cause of death was head injury as a result of sharp cuts described, which were ante mortem, homicidal and caused by heavy sharp object(s) and being sufficient to cause death in ordinary course of nature. He opined that the death in this case was immediate and the probable time that elapsed between death and autopsy was about 5-6 days.

It was on 14.06.2009, Raj Singh @ Papli, before whom both the accused confessed their guilt regarding murder of Krishan, produced both the accused before the Police. SI Parkash Chand – the Investigating Officer arrested both the accused and recorded the statement of Raj Singh. Thereafter, both the accused were sent for medical examination. PW-14 Dr. Dinesh Rohilla, Medical Officer, C.M.C., Pataudi after conducting medical examination handed

over the clothes of both the accused to the police after converting into separate parcels. During interrogation on 15.06.2009, both the accused i.e. Bintu and Rakesh suffered disclosure statements Exs.PB and PC pointing out the place of occurrence. Thereafter, on completion of necessary formalities, report under Section 173 Cr.P.C. was filed against the present appellants.

To prove its case, apart from examining PW-13 Dr. Vijay Pal Khanagwal, who conducted post mortem examination; PW-14 Dr. Dinesh Rohilla, who medically examined both the accused; PW-16 SI Parkash Chand, who deposed with regard to the investigations carried out by him as well as other witnesses of formal nature, the prosecution examined PW-1 Ajit Singh, father of the deceased Krishan, who proved his statement Ex.PA i.e. basis of FIR and PW-4 Raj Singh @ Papli, who deposed with regard to the extra judicial confession made by the accused.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statements recorded under Section 313 Cr.P.C. However, both the accused pleaded false implication. After considering the entire evidence on record, the learned trial Court convicted and sentenced the present appellants, as mentioned above.

Before this Court, learned counsel for the appellants has vehemently argued that the prosecution has miserably failed to complete the chain of circumstances to return a finding that it is the appellants alone, who are responsible for causing death of the deceased Krishan. It is argued that the statement of PW-1 Ajit Singh is to the effect that he has seen the appellant Rakesh on the intervening night of 7/8.06.2009, but such last seen evidence is uncorroborated evidence with any other fact or circumstance to nail the appellant Rakesh. It is also argued that there is absolutely no incriminating

circumstance against the appellant Bintu @ Vishal. The other prosecution evidence is PW-4 Raj Singh @ Papli before whom the appellants have suffered extra judicial confession, but what was the circumstance, which may compel the accused to confess their crime before him has not been explained. It is also argued that there is unexplained delay in lodging of FIR on 12.06.2009 though deceased Krishan went missing on the intervening night of 07/08.06.2009.

On the other hand, Mr. Garg submitted that as per PW-1 Ajit Singh, he was searching for his son, therefore, the delay in lodging of FIR stands explained. It is also argued that from the post-mortem report, it transpires that the probable time elapsed between death was about 5-6 days which is around 07/08.06.2009. It is also submitted that the last seen evidence given by PW-1 Ajit Singh stands corroborated by extra judicial confession proved by PW-4 Raj Singh. Thus, the prosecution has completed the chain of circumstance against the present appellants.

We have heard learned counsel for the parties and with their assistance gone through the record carefully. Though in his statement Ex.PA, which led to lodging of FIR Ex.PA/1, PW-1 Ajit Singh has deposed that he has seen his son Krishan with Rakesh on the intervening night of 07/08.06.2009, but he has not lodged any report on the next available opportunity. The report has been lodged after the recovery of the dead body on 12.06.2009. Though the trial Court has noticed that the deceased is the first cousin of the accused, but none of the witnesses have deposed such fact. Such relationship comes in the disclosure statement of accused Rakesh. Such disclosure statement, which is not leading to recovery of any fact, cannot be read into evidence in support of relationship of the deceased and the accused. Apart from the last seen evidence as deposed by PW-1 Ajit Singh, there is no other circumstance to complete the chain of events.

The extra judicial confession is made to PW-4 Raj Singh resident of VPO Pathreri, District Gurgaon, but his social status in the village or the relationship with the accused has not come on record. Still further, PW-4 Raj Singh while appearing in the witness box deposed that both the accused came to him to confess their guilt on 12.06.2009, whereas as per the testimony of PW-16 SI Parkash Chand – the Investigating Officer, Raj Singh @ Papli produced both the accused before him on 14.06.2009. Though the learned trial Court found that error of date might be on account of loss of memory with the passage of time or result of some typing mistake, but PW-4 Raj Singh has not stated that either of the accused has confidence in him or that he has special relationship with them. More so, in his cross-examination, he stated that he had not produced the accused before the police.

The trouser and shirt of the accused – Rakesh were handed over to Constable Krishan Kumar by PW-14 Dr. Dinesh Rohilla, who medico legally examined him on 14.6.2009. Similarly, PW-14 Dr. Dinesh Rohilla also handed over the trouser and shirt of the accused – Bintu to Constable Krishan Kumar, who was medico legally examined by him on 14.6.2009. Such parcels have been produced in evidence such as pink shirt and one brown pant are Exs.P-51 and P-52, whereas green T-shirt is Ex.P- 53 and cream pant is Ex.P-54. As per report of the Forensic Science Laboratory, human blood was detected on Ex.8b (brown pant) and on Ex.8a (pink shirt) though the blood could not be detected on Exs.9a(T-shirt) & 9b (pants).

We find that the prosecution has failed to complete the chain of circumstances so as to prove the commission of offence by the either of the appellants. The first information report was given after 4-5 days even when the father knew that the deceased has gone with Rakesh. The post mortem report

shows that the deceased dies around the time, when he was last in the company of the accused Rakesh, but that circumstance alone is not sufficient to convict him. The extra judicial confession is before a person, who is not appearing to have any special position, which may prompt the accused to suffer the confession before him. Still further, the statement of PW-14 Dr. Dinesh Rohilla does not show as to brown trousers and the pink shirt was of which of the accused. Therefore, forensic report cannot be linked to any of the accused. We may say that it is shoddy way of conduct of investigations and that Dr. Rohilla has also failed to specify as to which clothes were belonging to which accused. Therefore, the clinching evidence has not been linked to any of the accused. In the absence of any tangible convincing evidence against both the appellants, we deem it appropriate to extend benefit of doubt to both of them.

Thus, in view of the above discussion, we allow the present appeal and acquit appellants Rakesh and Bintu @ Vishal of the charges levelled against them by granting benefit of doubt. They shall be set at liberty forthwith, if not required in any other case.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

27.04.2015
Vimal