

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-354-DB-2010 (O&M)

Date of decision: 28.10.2015

Parkash Chander @ Pintu

..... Appellant

Vs.

State of Haryana

..... Respondent

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

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. Jagjot Singh Lalli, Advocate,
Mr. Surender Deswal & Mr. Rahul Deswal,
Advocates for the appellant.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 11.01.2010 rendered by learned Additional Sessions Judge (Fast Track Court), Karnal, whereby appellant-accused was convicted for committing offence punishable under Sections 302/34 of Indian Penal Code (for short 'IPC') and 392/34 IPC. Vide order of sentence of even date, he was sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹5,000/- with default clause for committing offence punishable under Section 302/34 IPC; for offence under Section 392/34, he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of

₹ 2,000/- with default clause.

Brief facts of the case are like this; that on 25.07.2008, Krishan Kumar ASI, received a telephonic message that a dead body was received in a tanker. He reached the spot where Munish Kumar met him and got recorded his statement (Ex.P15) to the effect that he has been working as a Munim in the Soni Traders, 'Delhi' at the Bitumen plant, Refinery, Panipat, for the last 5 years. He has been sending the loaded vehicle of Bitumen from where the same was requisitioned. On 24.07.2008, at about 7:00 P.M., a truck bearing No. UP-85B-9437, loaded with Bitumen, was sent to Gurgoan. The aforesaid vehicle belongs to their transport company. Rajinder Kumar s/o Birjoo, R/o Piteria Patti, Sultanpur, UP was driver on that truck and there was no Conductor on that truck. On 25.07.2008, at about 7:30 A.M., when he was at home, Kishori Lal s/o Gopal Dass, R/o New Ramesh Nagar, Tehsil Camp, Panipat, a servant at '*Pooja Petro Bitumen*' Alipur Khalsa, informed him on his mobile phone No. 94163-92039 through his mobile number 98121-05200 that "*your vehicle has come for selling the Bitumen and there is one more boy alongwith the driver, who states his name as Parkash and is a Conductor on your vehicle. That the vehicle has been got parked outside the factory.*" On receipt of this information, he alongwith another driver namely Ombir s/o Prem Singh and Pardeep s/o Maharaj, reached at '*Pooja Petro*', Alipur Khalsa, by a motorcycle make Hero Honda. On reaching there, they found their vehicle lying parked on the road in front of the factory. Not finding his driver Rajinder at that place, he asked from the boy standing near the vehicle who disclosed his name as Parkash s/o Vishvanath, R/o Haveli, Kharakpur, Bihar and stated that he was the Conductor of the vehicle. He asked

Parkash to drive the vehicle. Then Parkash had driven the vehicle towards village Alipur Khalsa. Manish, Ombir and Pardeep, all the three were on their motorcycle and followed the vehicle. When the vehicle reached at a distance of about 2 killa, complainant got stopped the vehicle and asked his driver Ombir to sit in the cabin. He told the complainant about the dead body of his driver Rajinder, lying in the cabin with an injury on his head. Parkash had fled away from the spot.

As per complainant, Rajinder was murdered at night by Parkash by causing injury on his head. Complainant further stated that Parkash has murdered his driver Rajinder with an intention to sell the Bitumen. On this report, ASI Krishan Kumar, made his endorsement Ex.P21. He inspected the place of occurrence and prepared the rough site plan of the spot as Ex.P22. Photographs of the place of occurrence were also obtained. FSL team was called who inspected the scene of occurrence. Inquest proceedings were completed. Dead body of Rajinder was sent for post-mortem examination. Canter, *Wheel Pana* and *Gaiti* loha were taken into police possession vide memo Ex. P18. Rough sketch plan of *Wheel Pana* was prepared as Ex.P16 whereas that of *Gaiti* loha as Ex.P17. Statement of witnesses were recorded. On reaching the police station, case property was deposited with the MHC. On 26.07.2008, HC Ved Pal handed over parcels which were taken into police possession.

On 26.07.2008, investigations of this case were handed over to Shri Krishan Kumar, Inspector/SHO, Police Station Gharaunda. On 13.08.2008, he was present at Bus Stand, Gharaunda on VIP duty. Complainant and Kishori Lal met him at bus stand. He along with other police officials had take them by Govt. Jeep to Railway Station, Karnal.

There, Kishori Lal and Manish identified accused Parkash. Accused was arrested. From personal search of the accused, driving licence (Ex.P1) valid upto 18.05.2020 was recovered and taken into police possession vide memo Ex.P2. On interrogation, accused suffered disclosure statement Ex.P3. It was witnessed by Manish and Kishori Lal. Accused, in his disclosure statement, disclosed that he and co-accused Ranjit and his maternal uncle Chandan Singh had planned that he will be employed on a truck or canter on which there was no Conductor or second driver and that he was employed in pursuance of that, on a truck on which Rajinder was driver. Parkash accompanied the driver Rajinder on the truck and reached Toll Tax Barrier, Panipat. They were followed by Ranjit and Chandan Singh. They also boarded the same truck. When the truck crossed Panipat, Parkash asked Rajinder that he will drive the truck and further that Rajinder should take rest. Rajinder, thus, slept on the back seat. Parkash accused and co-accused then took back the truck towards Kohand Chowk on Alipur Khalsa Road. While turning the said truck on Kaimla Road and while Rajinder was sleeping, Parkash gave a '*Gaiti*' blow on the head of Rajinder. Ranjit Singh gave a blow with '*Pana*' and Chandan caught hold legs and thus Rajinder was done to death at the spot. Accused also disclosed that he can identify the said place. In pursuance with the disclosure statement, accused identified the place of occurrence. Demarcation memo (Ex.P4) was prepared which was signed by accused Parkash and attested by Manish and Kishori Lal. Rough site plan of the place of occurrence was prepared as Ex.P5. Accused also disclosed that the truck was taken to Ali Pur Khalsa at *Pooja Tarcoal* factory to sell the truck there.

On 19.08.2008, Naresh Kumar, produced R.C. of the tanker

which was taken into police possession vide memo Ex.P24. On 25.08.2008, ASI Krishan Kumar, moved an application before the doctor for seeking his opinion by producing *Gaiti and Wheel Pana*, as to if injuries had been caused by these weapons or not, to which doctor opined Mark 'A' that the injury could be possible by those weapons.

After completion of necessary investigations, the challan was presented in the Court only against accused Parkash. From 29.08.2008 to 07.09.2008, search for accused Ranjit and Chandan was made but no clue was found about their whereabouts in spite of non-bailable warrants against them, they could not be arrested. However, they were kept under column No.2 of the challan with the stipulation that as and when they will be arrested, supplementary challan will be produced against them.

Finding a *prima-facie* case against the accused, he was charge-sheeted for committing offence punishable under Sections 120-B, 302/34 and 392 IPC.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded to which accused denied each prosecution allegation appearing against him and pleaded his innocence.

By way of defence, accused pleaded that he was made a scapegoat and whole investigations and proceedings are biased. All the contents of the complaint are wrong. He was never driver on the aforesaid truck but on that very day he was present at the *dhaba*. Police came there in search of real culprits who were his relatives and as such, he was arrested by the police.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court held appellant-

accused guilty for committing offence punishable under Sections 302/34 and 392/34 IPC. He was also punished vide order of sentence of even date as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence coming on record.

It is a case based on circumstantial evidence. Before basing conviction on circumstantial evidence, certain parameters have been prescribed by Hon'ble Apex Court in Arvind @ Pappu Vs. State (Delhi Administration), 1999(2)R.C.R.(Criminal), 810. The following parameters have been given as:-

- (i) Circumstances relied upon in support of conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused.*
- (ii) The circumstances from which conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused.*
- (iii) All the circumstances cumulatively taken together should lead to only irresistible conclusion that accused alone is the perpetrator of the crime.*

Manish (PW9) was working as a Munim with company *Soni Traders* at the Bitumen Plant, Refinery, Panipat. On 24.07.2008, at about 7:00 P.M., he sent truck No. UP-85B-9437, loaded with Bitumen to Gurgaon. Rajinder Kumar s/o Birjoo was the driver on that truck whereas there was no Conductor on that truck at that time. Manish as PW9 proved

this fact. He has also stated so before the police in the FIR (Ex.P15). Later on, this truck was found at the '*Pooja Petro Bitumen*', Alipur Khalsa, where the same was taken for selling Bitumen. Kishori Lal (PW15) and employ of the aforesaid '*Pooja Petro Bitumen*', informed about the presence of aforesaid truck, belonging to the company of Manish, to him telephonically that “ *your vehicle has come for selling the Bitumen and there is one more boy alongwith the driver, who states his name as Parkash and is a Conductor on your vehicle. That the vehicle has been got parked outside the factory.*” Kishori Lal as PW15 stated so when appeared as witness in the Court. Even, Manish (PW9) also corroborated this fact but there is difference between the statements of PW9 and PW15 on this count. Manish as (PW9) deposed in the Court that he received a telephonic message from Kishori Lal at 6:30/7:00 A.M. He also gave his mobile phone number as well the mobile phone number of Kishori Lal. He further deposed that on receiving the telephone from Kishori Lal, he expressed that his tanker cannot be there as the same had already been sent to Sohana, Gurgaon. Thereafter, he again received a telephonic call confirming that it was his vehicle UP-85B-9437 and further that he should reach there immediately. On the point of receipt of second telephonic call, there is no mention in the FIR (Ex.P15). Also, the details of the mobile phone have not been collected by the Investigating Officer nor produced in the Court, so as to show that in fact Kishori Lal made a telephonic call to Manish, informing him about the presence of truck at his factory for sale of Bitumen. Apart from it, Parkash accused was said to have employed by Rajinder as Cleaner but there is, in fact, no evidence on the file to show that Rajinder, in fact, appointed Parkash as Cleaner on the aforesaid truck. The disclosure statement of

Parkash (Ex.P3) cannot be taken as witness against him, since it is not admissible in evidence on this point. Thus, the employment of Parkash on the truck in question as Cleaner is not free from doubt.

In FIR (Ex.P15), the information given by Kishori Lal to Manish was to the effect that *“your vehicle has come for selling the Bitumen and there is one more boy alongwith the driver, who states his name as Parkash and is a Conductor on your vehicle. That the vehicle has been got parked outside the factory.”* Thus, as per FIR, Kishori Lal gave information that there was one more boy alongwith the driver of the vehicle when the vehicle came to his factory for the sale of Bitumen. Manish, when appeared as witness, deposed that when on receipt of information he reached the spot along with Ombir and Pardeep, they found Kishori Lal present there and tanker was parked in the factory. His driver Rajinder was not present there. They came out of the factory and they were informed that Parkash had brought the vehicle there. On inquiry, Parkash told that he had come with Rajinder and that he had stayed back on the way in some hotel. When Rajinder was not there, the information passed on by Kishori Lal to Manish that there was one more boy alongwith the driver, becomes doubtful. It is not known as to about which driver, Manish was talking in FIR (Ex.P15). In FIR, it is specifically mentioned that Parkash is a Conductor on the vehicle. On the point as to where the vehicle was parked, when Manish reached the spot, again the statement of Manish (PW9) and FIR are inconsistent. As per Manish (PW9), tanker was parked in the factory and Parkash brought the vehicle out of the factory on his asking where as per FIR the vehicle was parked outside the factory on the road. In FIR (Ex.P15), there is no mention about staying back of Rajinder on the

way in some hotel. Even otherwise, it does not appeal to the reason that Rajinder driver of the truck would stay back in some hotel and allow the truck to be driven by Parkash. Also, there is no plausible explanation coming forth as to why Rajinder stayed back on the way in some hotel. Not only this, even asking of Parkash by Manish to drive the vehicle to his office, does not appeal to reason. Parkash is not the employee of Manish. Manish (PW9) clearly stated that on receipt of information, he along with his driver Ombir and maternal uncle Pardeep came to the spot. When Manish was having his own driver, he would always ask him to drive the vehicle and not to Parkash. As the dead body of Rajinder was lying in the truck itself, it was quite natural for Manish to check the vehicle in the first instance but he did not do that. It is unbelievable that finding Rajinder, driver of the truck, not present at the spot, he would not make search for him or at least would not go inside the truck to verify the facts and to check the material loaded in the truck. The story put forward by the prosecution that at the asking of Manish, Parkash drove the vehicle upto the distance of about 2 killas and then vehicle was stopped and Ombir was asked to drive the same, is also not believable. It is not plausible that in such circumstances, Manish will follow the truck alongwith Ombir and Pardeep on the motorcycle and none of them would sit in the truck. Further, it is not known as to why and under what circumstances after the distance of about 2 killa, the truck was made to stop and Ombir was asked to drive the truck in question. Not only this, even Kishori Lal as PW15 deposed about these facts differently. As per this witness, when Manish alongwith his maternal uncle and driver reached the factory, accused Parkash and Cleaner was present near the canter. Manish caught hold of the accused. Manish

inquired from accused about his driver but he did not tell anything about the driver of Manish. Then, accused alongwith the driver of Manish started proceeding whereas Manish alongwith his maternal uncle went on their motorcycle. After about 2 acres from there, accused stopped the tanker. After sometime, they heard a noise that the accused had fled away. Thus, as per this witness, driver of Manish was with Parkash when they drove the truck away from the factory and further that it is not Manish who stopped the tanker rather accused Parkash himself stopped the tanker. As such, the statement of Kishori Lal (PW15) and Manish (PW9) and even the FIR (Ex.P15) are inconsistent and the circumstance put forward by the prosecution leading to this crime do not complete the chain of evidence from which conclusion of guilt of the accused can be drawn.

Further in order to fasten the accused with this crime, there is evidence regarding recovery of '*Wheel Pana*' and '*Gaiti*' vide memo Ex.P18. ASI Krishan Kumar as PW13 deposed that on receipt of telephonic message that a dead body was received in a tanker, he reached the spot, met Manish there, recorded his statement Ex.P15, made his endorsement Ex.P21, inspected the place of occurrence, prepared the rough site plan as Ex.P22, obtained photographs of the place of occurrence, called FSL team, inspected the scene of occurrence and completed the inquest proceedings. Dead body of Rajinder was sent to G.H.Karnal for post-mortem. He further deposed that the canter, '*Wheel Pana*' and '*Gaiti*' loha were taken into possession vide memo Ex.P18. Rough sketch of '*Wheel Pana*' was prepared as Ex.P16 and that of '*Gaiti*' loha as Ex.P17. All these documents show that '*Wheel Pana*' and '*Gaiti*' were recovered by the police on 25.07.2008 itself. Manish is one of the witnesses of these documents. Manish (PW9) deposed

that accused suffered a disclosure statement during custody that he can get recovered '*Wheel Pana*' and '*Gaiti*' vide disclosure memo Ex.P3, on which accused put his signatures and witnesses also signed the same. Thereafter, in pursuance of disclosure statement, accused got recovered '*Wheel Pana*' and '*Gaiti*' from the cabin of the tanker vide memo Ex.P18. As per Krishan Kumar, DSP (PW1), who arrested the accused in this case, deposed that accused Parkash was arrested on 13.08.2008. He also deposed about sufferance of disclosure statement by the accused as Ex.P3. If we peruse this disclosure statement, it would become clear that though accused deposed about hiding of '*Gaiti*' on which blood and hair of Rajinder were stuck in the box fitted under the rear sleeping seat yet he did not state that he can get the same recovered. In fact, the recovery of '*Wheel Pana*' and '*Gaiti*' has already been effected i.e. before recording of disclosure statement of accused Ex.P3. In pursuance with this disclosure statement, the accused only demarcated the place of occurrence vide memo Ex.P4 and also the place where Ranjit Singh was alighted on return and the place where tanker was parked in front of the factory gate earlier and a call was made by Chandan to Kishori Lal and further the place where the vehicle got weighed and the place where after getting weighed the vehicle, the tea was taken at the tea stall and from where Chandan fled away. He also gave demarcation of the place from where he fled away after parking the truck having the dead body of Rajinder. In fact, this demarcation memo does not fix the accused with this crime beyond reasonable doubt as most of the demarcated places were already known to the police. Recovery of weapons of offence were not made at the instance of the accused. Weapons of offence have already been taken into possession by the police from the truck in question

itself before the arrest of the accused. As such, recovery of weapons of offence in no way can be said to be a circumstance against the accused. Ex.P3 disclosure statement regarding admission of confession of accused is not admissible in evidence. The most important circumstance of this case goes against the prosecution. Ombir driver of the truck who had seen the dead body for the first time in the truck is the most material witness of the prosecution but he was simply given up by the prosecution as unnecessary. Even, this witness has not been given up as having been won over by accused. Likewise, Pardeep, maternal uncle of Manish, who was also with Manish throughout, has also been given up as unnecessary. Had these witnesses been examined, the prosecution case would have been disclosed. Non-examination of these witnesses also causes a dent in the prosecution case. Even, prosecution has examined Sonu, s/o Shadin as PW14 alleging that he was working on a Dharam Kanta in the name of Shri Maha Luxmi Dharam Kanta. Though, this witness deposed that at about 6:00/7:00 A.M. a crobo vehicle came at the Dharam Kanta for weighing. Kishori Lal with two persons namely Chandan and Parkash woke him up for weighing the vehicle. This witness further deposed that they told the registration number of the vehicle as 7666. The same number was entered by him in the weighing machine and the receipt was handed over to Kishori Lal. Thus, this vehicle number does not connect the truck in question with this crime. Even during his cross-examination he deposed that the receipt was not issued in the name of accused Parkash. He had not seen any dead body in the vehicle at the time of weighing the same. He did not notice any bad odour coming from the vehicle. Thus, the statement of Sonu (PW14) is of no help to the prosecution case. As a result, the aforesaid disclosed

circumstances relied upon in support of prosecution are not fully established and the chain of evidence furnished by those circumstances is not complete so as to leave a reasonable ground for a conclusion consistent with the guilt of the accused.

For the reasons recorded above, finding merit in this appeal, it is accepted and the impugned judgment of conviction dated 11.01.2010 and order of sentence of even date are set aside. Appellant-accused be released at once, if not wanted in any other case. Necessary compliance be made in this regard.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

28.10.2015
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