

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-425-DB of 2010

Date of Decision: 02.11.2015

Ravi Kumar & Others

...Appellants

Versus

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? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mrs. Ritam Aggarwal, Advocate for the appellants.

**Mr. Vivek Saini, Assistant Advocate General, Haryana
for the respondent-state.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment of conviction dated 13.01.2010 rendered by learned Additional Sessions Judge, Gurgaon whereupon appellants-accused were convicted for committing offence punishable under Sections 396, 302 and 201 of the Indian Penal Code (for short 'IPC'). Vide order on sentence dated 18.01.2010, each one of the accused was sentenced to undergo imprisonment for life and fine of Rs. 5,000/- with default clause for committing offence under Section 302 IPC; to undergo imprisonment for life and fine of Rs. 5,000/- with default clause, for committing offence under Section 396 IPC and to undergo rigorous

imprisonment for 3 years and fine of Rs. 2,000/- with default clause for committing offence under Section 201 IPC.

2. Brief facts of the case are like this; that on 26.10.2006 ASI Randhir Singh received a telephonic message that dead body of a person was lying in the bushes at Gurgaon-Patuadi road in the revenue estate of village Jhund Sarai. On this information, he along with police officials reached the spot and found Jagmohan (PW-10) present by the side of the dead body who got his statement, Ex. PU, recorded to the effect that he is resident of village Pranpura. About one and half years ago, murder of his younger brother Vinod Kumar was committed by Sunil son of Sube Singh. In that case, the prosecution evidence was completed. However, the aforesaid case was pending in the Sessions Court at Rewari. Dharambir (deceased) son of Bhagwan Singh who was his brother-in-law (bahnoi) in relation and was living with them for the last 5 years and running a retail shop at village Pranpura road at Nangal Buchi turning. In the aforesaid murder case, Ex-Sarpanch Babu Lal was a witness. Sister of Sunil's father is married to Umed Singh son of Ramji Lal Ahir of their village. As such, Sunil's father along with his brother-in-law Sube Singh has been putting pressure on their witnesses for compromise. He was also putting pressure on his brother-in-law Dharambir. About ten days back, in the presence of Jasram son of Roshan Lal, Dharambir had told that pressure was being put on him for arranging compromise and asked as to what should be done. Jagmohan further reported that at about 5.45 pm his brother-in-law Dharambir, after closing his shop, had left for his house at Jhund Sarai by Haryana Roadways bus but he did not reach home. That day, he received an

information that dead body of Dharambir was lying near the road at a place in between Babra and Jhund Sarai. On receipt of aforesaid information, he along with Siri Ram son of Bhup Singh, Ram Avtar son of Hardayal and Sube Singh son of Ganpat reached the spot. Jagmohan, complainant, further stated that murder of Dharambir has been got committed by Sunil from his companions by planning, as Dharambir was obstructing in arriving at compromise in the aforesaid murder case. After committing murder, with an intention to destroy the evidence, the dead body was thrown here near Jhund Sarai.

3. On the statement of Jagmohan, endorsement, Ex. PU/1, was made and the same was sent to police station for registration of the case whereupon formal FIR, Ex. PU/2, was recorded. Photographs of the place of occurrence was got obtained. Site plan of the place of occurrence was also prepared as Ex. PSS. Inquest proceedings were completed. Blood stained earth was lifted from the spot. Blood stained bushes were also taken from the spot and converted into two separate parcels which were duly sealed and were taken into police possession, vide memo Ex. PF and Ex. PG. Thereafter, dead body of deceased was sent to Civil Hospital, Gurgaon for its post-mortem examination. Post-mortem report is Ex. PW. Case property was deposited with the MHC of police station. After post-mortem, dead body was handed over to relatives of the deceased, vide receipt Ex. PH/1. On 28.10.2006, statement of Santosh wife of Dharambir-deceased was recorded.

4. On 07.11.2006, ASI Randhir Singh received copy of disclosure statement of accused-Rohtash, Ex. PS, which was recorded in FIR No. 1133/2006 of PS-DLF, Gurgaon. On 09.11.2006, he received copy of

disclosure statement of accused Budh Ram which was recorded in FIR No. 771 of 2006 of PS-DLF, Gurgaon. As accused-Rohtash and Budh Ram confessed about commission of the crime of this case along with co-accused, therefore, on 15.11.2006, accused-Harkesh was arrested in this case who was already in custody in another case. On interrogation, he suffered disclosure statement, Ex. PRR, to the effect that on 25.10.2006 at about 8.00 pm, he along with Parmod, Mukesh, Lalit, Rohtash and Budh Ram was coming in Max jeep bearing No. HR-61-1154. When they reached near Pataudi Chowk, Pataudi, they gave lift to deceased in the Max jeep. When they crossed village Jamalpura, deceased-Dharambir was murdered and his dead body was thrown in the bushes. He also snatched bag of the deceased containing one pair of Kurta Paijama (Ex. P5 and Ex. P6), one purse (Ex. P3), two note books (Ex. P1 and Ex. P2), copy of Ration card (Ex. P8) and one receipt of Sahara India Bank (Ex. P7). They also recovered Rs. 1400/- from the deceased and divided the same in equal shares. He further disclosed that he can give the demarcation of the place of occurrence. He also stated that he had spent the amount of his share and can get the receipt of Sahara India Bank recovered. In pursuance with this disclosure statement, accused-Harkesh led the police party and demarcated the place of occurrence, vide memo Ex. PVV. Same was attested by Constable Suresh Kumar and ASI Suhash Chand and thereafter he led the police party and got recovered a receipt, Ex. P7, of Sahara India Bank which was taken into possession, vide memo Ex. PAA. It was also attested by aforesaid two witnesses. Site plan of place of recovery was prepared as Ex. PTT. Case property was deposited with the MHC of the police station.

5. On 20.11.2006, accused-Lalit was arrested who was already in custody in some other case. On interrogation, he suffered disclosure statement Ex. PUU to the same effect as was done by accused-Harkesh. He also disclosed that he could get the photocopy of ration card of deceased recovered. Thereafter, in pursuance with this disclosure statement, he led the police party and demarcated the place of occurrence, vide memo Ex. PUU/1. It was attested by Constable Birender Singh and Contable Mandeep Singh. Thereafter, he led the police party to the disclosed place at Gurgaon-Pataudi road near Jhund Sarai ahead of police post towards Gurgaon ahead of Mamta factory in the bushes standing at PWD Road thoroughfare and took out from there a photocopy of first page of ration card (Ex. P8), vide memo Ex. PUU/2. Site plan of the place of recovery was prepared as Ex. PUU/3. Case property was deposited with the MHC of the police station.

6. On 21.11.2006, accused-Ravi, who was already in custody in some other case, was arrested. He also disclosed the same facts as disclosed by Harkesh and Lalit. Vide disclosure statement Ex. PC, he further disclosed that he could get the note book (containing entries of accounts of the shop of deceased) (Ex. P2) recovered. Thereafter, in pursuance with this disclosure statement, he led the police party to his house and got recovered one note book for the year 2004 from the room of his house and the same was taken into police possession, vide memo Ex. PE. He also led the police party and demarcated the place of occurrence, vide memo Ex. PD which was attested by Constable Birender Singh and Constable Mandeep Singh. Site plan of the place of recovery of note book was prepared as Ex. PE/1. Case property was

deposited with the MHC of the police station. On 23.11.2006, accused-Parmod, Mukesh, Rohtash and Budh Ram were arrested in this case after taking permission from the court and interrogated separately. They suffered disclosure statements Ex. PZ/1, Ex. PZ/3, Ex. PZ and Ex. PZ/2, respectively, regarding the murder of the deceased and throwing of his dead body in the bushes; snatching of his bag, containing articles as mentioned above and distribution of Rs. 1400/- from the deceased, in equal shares. Accused-Budh Ram further disclosed that he could get the bag of the deceased recovered which he had kept concealed near and in between Vazirpur turning and Jhund Sarai in the bushes and about which no one else knows except him. In pursuance with this disclosure statement, he led the police party to the appointed place and got the aforesaid cloth bag, on which in yellow colour 'Dilbagh Gutka' was written, recovered, vide memo Ex. PV. On that very day, accused-Parmod made disclosure statement, Ex. PZ/1, to the same effect as was stated by the aforementioned accused regarding commission of this crime. In addition, he deposed that the photocopy of ration card (Ex. P8) and accounts copy of his shop (Ex. P1), which had fallen to his share, were kept concealed by him ahead of Bus Stand, Jhund Sarai and about the same he alone knows and can get the same recovered. In pursuance with this disclosure statement, he led the police party to the appointed place and got recovered note book, Ex. P1, vide memo Ex. PL. Rough site plan of the place of recovery was prepared as Ex. PL/1. Accused-Mukesh, on interrogation, made disclosure statement Ex. PZ/3 regarding commission of this crime to the same effect as was stated by the aforesaid accused. In addition, he made disclosure statement to the effect that

the purse in which photo of deceased was affixed had fallen to his share which was kept hidden by him in the bushes behind the Bus Stand, Jhund Sarai. He alone knows about that and could get the same recovered by giving 'nishandehi'. In pursuance with this disclosure statement, he led the police party to the appointed place and got recovered purse, Ex. P3, which was taken into police possession, vide memo Ex. PM. Site plan of the place of recovery of purse was prepared as Ex. PM/1. On interrogation, accused-Rohtash suffered disclosure statement Ex. PZ. He also narrated the occurrence of this case in the same manner as the aforesaid accused had disclosed. In addition, it was disclosed by him that the cloth of the deceased, which had fallen to his share, were kept concealed by him, about which he alone knows and can get the same recovered by giving 'nishandehi'. In pursuance with this disclosure statement, he led the police party to Bus Stand, Jhund Sarai and then towards Gurgaon side and then pointed a deserted room and from the northern corner of that room took out one polythene bag having one white colour Kurta Paijama (Ex. P5 and Ex. P6). The same were sealed with the seal of 'HS' and taken into police possession, vide memo Ex. PN. Rough site plan of the place of recovery was prepared as Ex. PN/1. All the recovered items were identified by Jagmohan-complainant.

7. On 24.11.2006, Jagmohan, Mohammad Ishaq, Naib Tehsildar and HC Raghbir Singh were joined in the investigations of this case. In their presence, all the four accused led the police party and demarcated the place of occurrence, vide memo Ex. PO.

8. Investigating Officer made request, Ex. PQQ, to Dr. Pardeep

Sharma for obtaining his opinion regarding cause of death whereupon doctor opined, vide Ex. PQQ/1, to the effect that cause of death was found as to be asphyxia due to homicidal strangulation. The deceased was pinned down by pressure on both hands and on the shoulders and then was strangled by hands and also by (SIC) pressure over nose and mouth. He further reported that no clear cut mark regarding use of any weapon was found. On return to the police station, case property was deposited with the MHC. All the aforesaid recovered articles were converted into sealed parcels separately sealed with the seal of 'HS'. On 29.11.2006, scaled site plan of the spot was got prepared from Sarwan Kumar, Draftsman-PW-13. Scaled site plan is Ex. PX. After completion of necessary investigations, the challan was put in the court against the accused.

9. Finding a prima-facie case against the accused, they were chargesheeted for offence punishable under Section 396, 302, 201 and 412 of the IPC. After taking entire prosecution evidence including FSL report, Ex. PSS, Ex. PSS/1 and Ex. PSS/2, statements of accused, under Section 313 Cr.P.C., were recorded, wherein, accused denied each prosecution allegation appearing against them and pleaded their innocence.

10. After hearing both the counsel for the parties and appraising the entire material coming on record, the learned trial Court recorded the impugned judgment of conviction dated 13.01.2010 and order on sentence dated 16.01.2010 as mentioned in the earlier part of this judgment.

11. We have heard Mrs. Ritam Aggarwal, Advocate for the appellants and Mr. Vivek Saini, Assistant Advocate General, Haryana for the state of

Haryana besides appraising the entire evidence and material on record.

12. This case is based on circumstantial evidence. No direct evidence of murder is available in this case. Dharambir-deceased was brother-in-law of Jagmohan-complainant, who was living with them. On the statement of Jagmohan, which is Ex. PU, the present case has been registered. The date of occurrence is 25.10.2006, whereas, the statement of Jagmohan was recorded on 26.10.2006 when he was found present near the dead body of deceased.

13. Accused of this case are involved in series of murders of innocent persons. The *modus operandi* of the accused, from the material available on record, is this: that they give lift to an innocent person in their max jeep and thereafter finding a suitable opportunity they kill him and rob him of his belongings and then throw away his dead body in order to screen the evidence. In the case in hand, the only circumstantial evidence available is regarding recovery of the belongings of the deceased from the accused and the demarcation given by the accused of the place of occurrence and also the place where the dead body was thrown.

14. Present case is the one which does not inspire confidence in the mind of the Court regarding guilt of the accused so far as the causing death of deceased Dharambir is concerned. From the statement of Jagmohan, PW-10, Ex. PU, on the basis of which FIR of this case was registered; it is evident that deceased Dharambir was having enmity with one Sunil. Murder of Vinod Kumar, younger brother of complainant, was committed by Sunil son of Sube Singh. That case was pending decision. Father of Sunil and his brother-in-law Sube Singh had been putting pressure on their witnesses as well on his brother-

in-law Dharambir for compromise. Even ten days prior to the present occurrence, Dharambir told him that he was being pressurized for getting the compromise effected and was asking as to what should be done in this regard. The statement of Jagmohan is also to the effect that murder of the Dharambir has been got done by Sunil from his companions by planning as Dharambir was obstructing in the compromise of the aforesaid murder case. Thus, Jagmohan expressed, in his statement Ex. PU, that it is Sunil, who after hatching a conspiracy, got Dharambir killed. Later on, police implicated accused of the present case regarding murder of Dharambir.

15. From the statement, Ex. PU which is the FIR of this case, it is evident that Jagmohan is resident of village Pranpura. Dharambir had been living with them for the last five years and had been running a retail shop at Pranpura road at Nangal Buchi turning. Santosh, PW-2, is the wife of Dharambir. Her statement is very material for the purposes of this case as it is she who had handed over the bag, containing Kurta Pajama, two note books, copy of ration card and one receipt of Sahara Bank to Dharambir after going to his shop and these very articles were, later on, allegedly recovered from the possession of accused of this case fixing them in the murder of Dharambir. Santosh as PW-2 deposed that on 24.10.2006, she had gone to her parental house at Pranpura. She is resident of village Jhund Sarai. She further deposed that she came back on 25.10.2006 to village Jhund Sarai. On 25.10.2006, she visited the shop of her husband in village Pranpura and met him and made a request to go with her to village Jhund Sarai to which he told that he shall come tomorrow and thereafter in the next breath she deposed that her husband

told her that he will come in the evening and then she handed over him two copies of record of the shop, one copy of bank Sahara, again said, one receipt of Sahara Bank, one pair Kurta Paijama and one purse belonging to her husband after keeping the same in a bag and thereafter she came back to village Jhund Sarai. Under these circumstances, handing over of the aforesaid articles by Santosh to her husband is not at all believable. When Jagmohan states, in his statement Ex. PU, that Dharambir had been living with them for the last five years, he means that Dharambir was living at Pranpura. This shows that there must be some ill will between Santosh and Dharambir and that is why she had gone to his shop to take him along while she had visited her parental house at village Pranpura. Under these circumstances, no one would believe that she would carry Kurta Paijama, two copies of record of the shop, one receipt of Sahara bank, copy of ration card and purse of her husband to village Pranpura in order to hand over the same to him. When she was asking her husband to come to village Jhund Sarai and her husband committed to come to village Jhund Sarai in the evening, in that eventuality, there was no need of handing over the change i.e. Kurta Paijama of deceased to him. Handing over two note books of the record of shop of the year 2004 is again not relevant and there was no point for her to take the aforesaid record of the shop to deceased and then handing over the same to him and further there was no necessity for the deceased to bring back the same record with him while coming back home. The question of handing over of purse of deceased to him is again not free from doubt. It is not expected of Santosh to take the articles with her while visiting her parental house. She had gone to her husband, only while she was coming

back, to make a request to him to come along, to which he stated that he shall come in the evening. The dead body of Dharambir was found on 26.10.2006. Statement of Santosh was recorded by the Investigating Officer only on 28.10.2006. Thus, all these facts make genuineness of the prosecution case doubtful. Rather, it appears that only in order to implicate accused of this case in this crime, the prosecution has introduced Santosh as witness in this case.

16. From the disclosure statements made by accused in FIR No. 1133 dated 04.11.2006 under Sections 302, 201 IPC, PS-DLF, Gurgaon, it becomes evident that while the accused confessed about commission of the crime of this case, they disclosed that the throat of the person, who they had given lift from Pataudi in vehicle No. HR-61-1154, was strangled by Rohtash by putting belt around his neck and thus his murder was committed. Whereas, Dr. Pardeep Sharma, as PW-11, who conducted the post-mortem examination of the dead body of Dharambir, proved his opinion, Ex. PQQ/1, to the effect that the cause of death was found to be asphyxia due to homicidal strangulation. The deceased was pinned down by pressure on both hands and on the shoulders and then was strangled by hands and also by (SIC) pressure over nose and mouth. No clear cut mark regarding use of any weapon was found. Thus, as per this doctor, no weapon was used for causing death of deceased. This doctor also did not state that the strangulation was by way of use of belt or that there was any mark to that effect. The doctor has clearly given the manner of strangulation as the pinning down pressure on both hands and on shoulders and then was strangled by hands and further by applying pressures over nose and mouth. Thus, causing of death of deceased Dharambir by putting belt

around his neck is not the one which doctor states in this case. As such, the prosecution case is not in conformity with the medical evidence available on the file which makes entire prosecution case doubtful.

17. Of course, Jagmohan PW-10 identified the aforesaid articles, Ex. P1 to Ex. P8, as belongings to deceased, yet, he is not the appropriate person to identify the aforesaid articles. The aforesaid articles were handed over to deceased by his wife Santosh. She could be the appropriate person who could identify the same. Even if, Dharambir had been living with Jagmohan but the aforesaid articles were not handed over to Dharambir by Santosh in the presence of Jagmohan or Jagmohan was not having any occasion to see the aforesaid articles. As per prosecution case, the aforesaid articles were handed over to deceased by Santosh and on the very day he had taken the same along with him while going to village Jhund Sarai. As such, the identification of Ex. P1 to Ex. P8 by Jagmohan also does not inspire confidence in the mind of the Court regarding guilt of the accused.

18. For the reasons recorded above, as the prosecution case is not free from doubt, therefore, the impugned judgment of conviction dated 13.01.2010 and order on sentence dated 18.01.2010 are set aside and by giving benefit of doubt to the accused, they are acquitted of the charges for which they faced trial. They be released forthwith, if not required in any other case.

(Hemant Gupta)
Judge

02.11.2015
Waseem Ansari

(Raj Rahul Garg)
Judge