

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-511-DB of 2010
Date of Decision : August 24, 2015

Dinesh @ Dina

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. H.N.Sahu, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J.

The appellant was charged for committing the offence punishable under Section 302 IPC for intentionally committing the murder of Gulshan. He was also charged for committing the offence punishable under Section 201 IPC for causing certain evidence connected with the said offence to disappear. Vide judgment and order dated 24/25.2.2010, learned Additional Sessions Judge, Nuh convicted him for the aforementioned offences and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- for the offence under Section 302 IPC and in default of payment of fine, to further undergo imprisonment for a period of one year and also sentenced him to

undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5,000/- under Section 201 IPC and in default of payment of fine, to further undergo imprisonment for a period of three months. Both the sentences were ordered to run concurrently. The period spent by him in custody during the trial was ordered to be set off against the substantive sentences.

Briefly put the case of the prosecution is that DDR No. 18 dated 20.6.2008 (Ex. PC) was got recorded by complainant-Baby on 20.6.2008 regarding missing of her 2½ years' old son Gulshan. On 22.6.2008, she presented application Ex. PD to ASI Girraj Singh at Bus Adda, village Khorī Kalan. It was stated therein that she belonged to Bihar, and, at that time, residing in Majid Colony, Khorī Kalan, Tauru and serving in Toras Company at Bhiwari. On 19.6.2008, her son Gulshan was found missing while playing. In that regard, she had made a report at the Police Post. She had been searching for her son and when she was going in the fields, she noticed bad smell. She found her son lying dead. She also stated that there was some dispute between her family and her cousin Dinesh @ Dina (the appellant), who also belonged to Bihar and at that time residing in Khorī Kalan. He was working in Balaji Company at Bhiwari. He had evil eye on her daughter. She had stopped him from coming to her house, but he threatened to destroy her family. He also used to quarrell

with her. On 20.6.2008, she alongwith other residents of the Mohalla had enquired from the appellant about missing of her son Gulshan, but he did not give any satisfactory reply. She suspected the involvement of the appellant in the murder of her son as he had been keeping an evil eye on her daughter and the enmity he had with her family. He had thrown the dead body of Gulshan in the fields.

Further case of the prosecution is that after making endorsement Ex. PD/3 on the application Ex. PD, ASI Girraj Singh forwarded the same to SHO, Police Station Tauru where FIR No. 134 dated 22.6.2008 (Ex. PD/1) under Sections 302 and 201 IPC was recorded by ASI Raj Kumar.

It is also the prosecution case that ASI Girraj Singh then went to the fields in the area of Khori Kalan, where the dead body of Gulshan was lying and identified by complainant-Baby and Swaminath Singh. Inquest report Ex. PD/4 was prepared under Section 174 Cr.P.C. Rough site-plan Ex. PD/6 was also prepared. Khem Chand, Photographer was summoned to the spot, who took photographs Ex. P1 to P3. The dead body was, thereafter, sent to PGIMS, Rohtak for post-mortem. The appellant was arrested on 23.6.2008. He suffered disclosure statement Ex. PD/7, pursuant to which he got recovered clothes of the deceased vide memo. Ex. PD/8.

After completion of the investigation and presentation of challan followed by commitment of the case to the Court of Sessions, the appellant was charged for the aforementioned offences to which he pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined twelve witnesses to prove its case.

When examined under Section 313 Cr.P.C., the appellant denied all the allegations and pleaded false implication. However, he did not lead any evidence in defence.

The trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellant, as mentioned above. Hence, the present appeal by the appellant wherein he has sought setting aside of the impugned judgment of conviction and sentence and for his acquittal of the offences under Sections 302 and 201 IPC.

This Court has heard learned counsel for the parties and gone through the evidence with their able assistance.

In support of its case, the prosecution had examined twelve witnesses.

PW1 Mahender Singh testified that on 8.9.2008, he inspected the spot and prepared scaled site-plan Ex. PA.

PW2 Swaminath Singh testified that on 19.6.2008

Gulshan, aged about 2½ years, went missing while he was playing. Accordingly, he alongwith his brother had been searching for him. Missing report was lodged by the mother of the deceased. The dead body was found present in the fields where foul smell was coming. He had reached the spot and identified the dead body to be that of Gulshan.

PW3 Baby testified that she was working in Toras Company at Bhiwari. Her 2½ years' old son Gulshan went missing on 19.6.2008. Report in that regard was made at Police Post Khorī Kalan on 20.6.2008. She also testified that while she alongwith others was going towards the fields in search of her missing son they felt bad smell emanating from the fields and on reaching there the dead body of Gulshan was discovered. According to the witness, the appellant, who was working in Balaji Company at Bhiwari, had dispute with her family as he had been keeping an evil eye on her daughter and she had asked him not to visit her house. The appellant had threatened to destroy her family. The appellant was also asked about the missing of Gulshan, but he had not given any satisfactory reply. She, accordingly, suspected the involvement of the appellant in the murder of her son.

PW4 Khem Chand, Photographer testified that on 22.6.2008, he inspected the spot and took photographs Ex. P1 to P3 and their negatives were Ex. P4 to P6.

PW5 Constable Sukhbir tendered in evidence his affidavit Ex. PE stating therein that on 25.8.2008, the MHC had handed over to him one plastic diba containing case property for delivering the same in the FSL, Madhuban. On the same day, he delivered the diba in the FSL and on return, handed over receipt No. 300 dated 25.8.2008 to the MHC.

PW6 Inspector Sajjan Singh testified that after completion of investigation, he prepared final report under Section 173 Cr.P.C.

PW7 ASI Raj Kumar testified that on receipt of ruqa Ex. PD, he recorded formal FIR Ex. PD/1 and had sent the special report to the Illaqa Magistrate.

PW8 Jagdish testified that on 19.6.2008 Gulshan, who was the son of his sister-in-law, went missing. They started searching for him. On 20.6.2008, the matter was reported to the police. On 22.6.2008, the dead body of Gulshan was found lying in the fields of Bajra crop. He further testified that the appellant who resided in the neighbourhood of the complainant, had been having an evil eye on the daughter of the complainant, who was aged 15/16 years. Before calling the police, the appellant was

taken into captivity in the fields by the public. When the police arrived, the appellant was interrogated and he disclosed that he had committed the murder of Gulshan.

PW9 ASI Girraj Singh testified that complainant-Baby submitted application Ex. PD to him on 22.6.2008. He sent the same to the Police Station for registration of the case. He then reached the spot where the dead body of Gulshan was lying in the fields. He conducted proceedings under Section 174 Cr.P.C. and sent the dead body for post-mortem. Photographer was called for taking the photographs. Rough site-plan was prepared. He arrested the appellant on 23.6.2008. On interrogation, the appellant disclosed that he had kept concealed the clothes worn by the deceased in the roof of a room adjoining the tubewell. Pursuant to the said statement, the appellant got recovered pant Ex. P1 and vest Ex. P2 of deceased-Gulshan which were taken into possession vide memo. Ex. PD/9.

PW10 Dr. Jitender Kumar Jakhar testified that he conducted post-mortem on the dead body of Gulshan, 2½ years' old male and observed as under:-

“The dead body was of a male individual wrapped in a white plastic pali. The length of the body was 79 cm. The body was naked except a black colour thread around waist in multiple plies containing two black colour beads in it. Body was emitting foul

smell. Scalp was missing except present over the occipital and left parietal region. Cranial bones were separated from their corresponding sutures. Left side temporal bone was missing. Skin and soft tissues were missing from the face and around the neck consequent of which underlying facial bones, mandible and cervical vertebrae were exposed. Chest was tense, abdomen was distended and penis and scrotum were also distended. Epidermis was peeled off at places all over the body. Hands and feet were degloved. Teeth were loosened in their sockets. Gnawing effects were present over the root of neck and posterior wall of the chest and over the thoracic vertebrae.

Finding for age : All deciduous teeth were present. Metopic suture was fused. The membranes of brain and brain, larynx, trachea, mouth, pharynx and esophagus were missing. The pleurae and peritoneum, lungs, heart, liver, spleen, kidney were softened and putrefied. The ribs, cartilages and the organs of generation were healthy. All abdominal viscera were jumbled up into a single mass. The urinary bladder was empty.”

Dr. Jitender Kumar Jakhar testified that the cause of death would be given after receipt of report from the Chemical Examiner about the viscera. The probable time that elapsed between death and post-mortem was about 3 to 5 days.

PW11 HC Vinod Kumar testified about sending of the

parcels to FSL, Madhuban.

PW12 EHC Ved Kumar testified that he had deposited the parcels in the FSL and handed over receipt thereof to the MHC.

Learned counsel for the appellant has submitted that there is no ocular account of the occurrence. The prosecution has tried to link the appellant with the crime on the basis of circumstantial evidence. However, the prosecution has failed to complete the chain of events, which may lead to one and only irresistible conclusion about the appellant being the culprit. No material has been brought on record to establish that the appellant was inimically disposed towards the family of complainant-Baby and for that matter committed the murder of her 2½ years' old son Gulshan. Pleading that the appellant has been falsely implicated, prayer has been made for acquitting him of the charges against him.

It has come on the record that the 2½ years' old son Gulshan of complainant-Baby went missing on 19.6.2008 while he was playing. An attempt was, thereafter, made by Smt. Baby to trace her missing son but it was of an exercise in futility. On 20.6.2008, she made statement about missing of her son Gulshan and, accordingly, DDR No. 18 dated 20.6.2008 (Ex. PC) was recorded in Police Post Khorī Kalan falling under Police

Station Tauru. The search of the child continued and on 22.6.2008 when the search parties were proceeding towards the fields, they noticed bad smell and going close, they noticed the dead body of Gulshan lying there. Immediately, thereafter, Smt.Baby proceeded to Police Post Khorī Kalan where she submitted application Ex. PD incorporating all the aforementioned facts. She also stated that the appellant, who also belonged to Bihar and at that time, residing at Khorī Kalan used to keep an evil eye on her 15/16 years' old daughter. When she stopped the appellant from coming to her house, he threatened to destroy her family. There used to remain quarrell between the appellant and the complainant. On the basis of application Ex. PD, FIR Ex.PD/1 came to be registered at Police Station Tauru by PW7 ASI Raj Kumar. This was followed by PW9 ASI Girraj Singh initiating the investigation and reached the fields of Bajra crop where the dead body of Gulshan was lying. The dead body was duly identified by PW2 Swaminath Singh and PW3 Baby. ASI Girraj Singh after conducting inquest, sent the dead body for post-mortem.

PW8 Jagdish, who happened to be closely related to the complainant, has testified that on 22.6.2008, while search was going on for Gulshan, bad smell was noticed from the fields of Bajra crop. At that time, the appellant was also with them in

conducting search of Gulshan. He was caught hold in the fields by the public and, thereafter, the police was called. When interrogated by the police, he disclosed that he had committed the murder of Gulshan. PW8 Jagdish further testified that the appellant was having evil eye on the 15/16 years' old daughter of Smt. Baby and due to that, the appellant had committed the murder of Gulshan.

PW9 ASI Girraj Singh has testified about application Ex. PD being submitted by Smt. Baby to him on 22.6.2008 and subsequently he alongwith the complainant reached the spot. After conducting inquest but before sending the dead body for post-mortem, he called the photographer, who took photographs of the dead body. He further deposed that on 23.6.2008, he arrested the appellant, who on interrogation disclosed that he had kept concealed the clothes of the deceased in the roof of a room adjacent to the tubewell and could get the same recovered. Pursuant to the said disclosure statement, the appellant got recovered the clothes i.e. pant of blue colour Ex. P1 and vest Ex.P2 vide memo. Ex. PD/8. It may be worthwhile to mention here that in the missing report Ex. PC recorded on 20.6.2008 i.e. much before the recovery of the dead body, Smt. Baby had stated that her son Gulshan was wearing white vest and blue pant when he went missing. The recovery of pant Ex.P1 of blue colour and,

that too, at the instance of the appellant pursuant to the disclosure statement made by him goes a long way to establish that it was the appellant, who had kidnapped the child and, thereafter, committed his murder. It is true that PW8 Jagdish had testified that before the police was summoned to the spot, the appellant, who was assisting in the search of the missing boy, was over powered by the public. However, that seems to be an exaggeration on his part as it was the consistent case of PW9 ASI Girraj Singh that the appellant was arrested on 23.6.2008 and in his cross-examination, he stated that on 23.6.2008 when he was returning from the spot, he learnt from some one that the appellant, who was wanted in the case, was hiding in his room in Majid Colony, Khori Kalan and on the basis of said information the appellant was arrested on 23.6.2008. It may be that the appellant was also member of the search team and when the dead body of the child was noticed, the sentiments of the members of his family and others may have run high and the appellant over powered and taken into captivity. However, the appellant was a young person and aged 23 years may have escaped from captivity and it was only on the following day that he was arrested by PW9 ASI Girraj Singh from the place of his hiding i.e. his room in Majid Colony, Khori Kalan.

From the testimonies of PW3 Smt. Baby, who is

mother of deceased-Gulshan, PW2 Swaminath Singh and PW8 Jagdish, it stands established that the appellant had been keeping evil eye on the 15/16 years' old daughter of Smt. Baby and when Smt. Baby stopped him from coming to her house, the appellant threatened to destroy her entire family.

From the testimony of PW10 Dr. Jitender Kumar Jakhar, it is made out that at the time of post-mortem, the scalp of deceased except the occipital and left parietal region was missing. The body was emitting foul smell. Left side temporal bone was also missing. Epidermis was peeled off at places all over the body. Gnawing effects were present over the root of neck and posterior wall of the chest and over the thoracic vertebrae. According to the doctor, the probable time that elapsed between death and autopsy was 3 to 5 days. Post-mortem having been conducted on 24.6.2008, the death must have occurred between 19.6.2008 and 21.6.2008. That coincides with the missing report lodged by Smt. Baby on 19.6.2008 and the discovery of the dead body on 22.6.2008. Merely because Dr. Jitender Kumar Jakhar testified that after receipt of report from Chemical Analyst, he could not opine about the cause of death is not sufficient to exonerate the appellant of the crime as the deceased happened to be an infant, aged about 2/3 years and once he had been done to death, his dead body remained lying in

the fields from where it was recovered after three days. In the interregnum, the animals moving in the area would have devoured the dead body as is clear from the missing of the various bones and presence of gnawing effects on the dead body.

In view of the above, this Court is of the considered view that no fault can be found with the impugned judgment of conviction and sentence passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

**(T.P.S. MANN)
JUDGE**

August 24, 2015
ajay-1

**(GURMIT RAM)
JUDGE**