

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-305-DB of 2011

Date of Decision:14.12.2015

Tijamool Gaddi

...Appellant

Versus

State of Punjab

...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: Mr. Mohammad Salim, Advocate
for the appellant.**

**Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab for respondent-State.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 31.01.2011 rendered by learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, whereby appellant-accused was held guilty for committing offence punishable under Sections 302, 201 of Indian Penal Code (for short 'IPC'). Vide order on sentence of the even date, he was sentenced to undergo rigorous imprisonment for life and a fine of Rs. 5000/-; in default of payment of fine, to further undergo rigorous imprisonment for a period of 3 months; for offence under Section 201 IPC to undergo rigorous imprisonment for a period of 3

years and a fine of Rs. 1000/-; in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

2. Briefly, prosecution case is like this; that on 10.10.2008, while Paramjit Singh, SHO, PS-Bullawal along with police officials was present in the area near Punjab and Sind Bank in connection with checking and patrolling, Bachittar Singh met the police party and got recorded his statement, Ex. PB, to the effect that for the last 13-14 years, he was running his scooter repair shop in the name and style of M/s Dashmesh Auto Service at Bullawal. As his stomach was upset, he had gone to choe, running adjacent to his shop for answering the call of nature. When he just sat down for the purpose, 3-4 dogs started running towards him. He became nervous and started running and then he found that on the bank of choe, half portion of a dead body of some unknown person was buried. He ran away from that place and told his neighbour Sukhwinder Singh Bains, who was running a television shop, about this. At about 1.00 pm, he along with 4-5 persons had again gone there and found that hands of the dead body was tied with nylon rope and neck was tied with yellow *Parna* and tongue was protruding. As per complainant, the scene was horrifying. On this statement Ex. PB, Inspector Paramjit Singh made his endorsement Ex. PB/1 and sent the same to the police station for registration of the FIR, whereupon formal FIR, Ex. PC, was registered. Investigations were conducted. Investigating Officer visited the spot and saw that dead body of an unknown person was lying near the choe in the area of Bullawal. Photographs were got obtained. Inquest report, Ex. PD, was prepared. Post-mortem of the dead body was got conducted. One *Kahi* (kassi) (Ex. P-9) made of iron and

wooden *dasta* (handle) (Ex. P-10) were recovered from a distance of about 18-20 *Karams* from the place of dead body and the same were taken into police possession, vide memo Ex. PE. Rough site plan of the place of occurrence and that of recovery were prepared. *Shorogaga* for identification of dead body, Ex. PG, was issued. News was got published in newspapers *Desh Seva* and *Daily Ajit* regarding recovery of dead body of an unknown person. The aforesaid news was published on 11.10.2008. On 12.10.2008, HC Raj Kumar produced photographs of the dead body which he took from digital camera and the same were taken into police possession, vide memo Ex. PH. These photographs are Ex. P-1 to Ex. P-8. On 14.10.2008, after post-mortem examination of the dead body, HC Harmesh Lal produced Benyan (vest) of blue color, pant readymade of grey colour, underwear of noswari color, parna of yellow colour, rope nylon of green colour. After preparing its parcel, the same was taken into police possession, vide memo Ex. PJ and then handed over to MHC of the police station for the purposes of identification. HC Harmesh Lal also produced one box parcel of DNA bearing seal impression 'CHH' along with sample seal after post-mortem of the dead body. The same was taken into police possession, vide memo Ex. PK and thereafter it was deposited with the MHC of the police station with seals intact. Photo of the dead body and relevant documents regarding disputed land were produced by Anil Viswas, brother of the deceased, which were taken into police possession, vide memo Ex. PW7/A. That photo is mark 'A' and the papers are mark 'B', whereas papers regarding disputed land are mark 'C'. The same were prepared by Anil Viswas from the internet. On 06.12.2008, accused-Tijamool Gaddi was arrested by SI Gurdial

Singh of police station-Bulalowal. The dead body was handed over to the officials of Municipal Committee, Hoshiarpur for cremation, vide receipt Ex. PL.

3. On 07.11.2008, Chandu Viswas, father of the deceased, came in the police station and identified the clothes of the deceased as the one belonging to this son Sushen Viswas. Identification memo of clothes was prepared as Ex. PA. Statements of witnesses were recorded. Further investigations of the case were conducted by Jeevan Kumar, SHO, PS-Bulalowal as Paramjit Singh, SHO/Investigating Officer was transferred.

4. On 11.12.2008, during the interrogation accused-Tijamool Gaddi made disclosure statement, Ex. PM, to the effect that he along with one nepali committed the murder of Sushen Viswas son of Chandu Viswas by strangulating him in the choe during night time by tying his hands and buried him by digging earth with spade and the spade was thrown at some distance of about 18-20 karams from the place they buried the dead body. He further disclosed that he can give the *nishandehi* of the aforesaid place. Thereafter, in pursuance with his disclosure statement, he gave *nishandehi* of the place from where dead body was recovered. The demarcation memo is Ex. PN. He also gave demarcation of the place where he kept concealed the aforesaid spade (already recovered). Rough site plan of the aforesaid place was prepared as Ex. PO. Statements of witnesses were recorded. Warrants of arrest was got issued for the arrest of the co-accused. Co-accused Nepali and Naveen @Lambu could not be arrested. As such, PO challan was presented in the court qua them. However, after completion of necessary investigations, the challan was put in

the Court against the accused TijamoolGaddi.

5. Finding a prima-facie case against the appellant-accused, he was charge-sheeted for offence under Sections 302, 201 IPC. After taking prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded, wherein he denied each prosecution allegation and pleaded his innocence. After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court recorded the judgment of conviction and order of sentence as set out in the earlier part of this judgment.

6. We have heard Mr. Mohammad Salim, Advocate for the appellant and Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab for the state of Punjab besides going through the entire record of this case.

7. It is a case of circumstantial evidence. There is no eye-witness of this case. So, for convicting an accused on the basis of circumstantial evidence, the following parameters, as laid down by the Hon'ble Apex Court in case titled as *Arvind @ Pappu vs. State (Delhi Administration) 1999 2 RCR (Criminal) 810*; are to be completed:

1. *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.*
2. *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.*

3. *All the circumstances cumulatively taken together should lead to only irresistible conclusion that accused alone is the perpetrator of the crime.*

8. Bachittar Singh son of Kulwant Singh, PW-2, first of all spotted the dead body of an unknown person, half buried in the area of village Bullowal. As per this witness, the upper portion of dead body was covered with dried grass and sand and both the hands of the dead body were tied with nylon rope and there was one yellow *Parna* around the neck of the dead body. The tongue of the dead body had come out and both the eyes were swollen and the face was horrible. The dead body was having blue vest and pant. SI Paramjit Singh on receipt of this information, reached the spot and took the dead body into police possession. Thus, there was no one present at the time of commission of this crime. The dead body was recovered on 10.10.2008.

9. Chandu Viswas, who is the father of the deceased, as PW-1, deposed that during the year 2007, his son Sushen Viswas had gone to Punjab and started residing at village Dalamwal near town Bullowal with one Teetu. During the month of *Baisakh*, his son Sushen attended the marriage of his brother Nikhil at his village and thereafter he had gone to Punjab and resided with Naveen @ Lambu son of Sipahi Gaddi who was belonging to Bihar but was residing at Ludhiana at that time. Sushen and Naveen @ Lambu were residing together at Ludhiana. They were also working together and selling clothes on *Rehri*. Sushen had a telephonic talk with him several times and also sent him money out of his earnings. During the month of *Dussehra*, his son Sushen came to Bullowal town with Naveen @ Lambu. So was told to him by his son Sushen. Later on Tijamoo Gaddi (accused) resident of Panchwan came

to his house and asked him about Sushen. Chandu Viswas as PW-1 deposed that he replied as his son had not come home. Then Tijamool (accused) told him that after giving him Rs. 3600/-, he was sent home. He further disclosed to Chandu (PW-1) that Sushen was telling him his desire to visit Goa. After disclosing the aforesaid facts, Tijamool (accused) became nervous (puzzle) and was trembling. On this, he got suspicious. Thereafter, Tijamool left his house. From this part of the statement of Chandu Viswas, PW-1, it cannot be said beyond reasonable doubt that it is accused Tijamool and Naveen @ Lambu who had committed the murder of deceased Sushen. Unless something more than this is proved on the file regarding involvement of appellant-accused in the murder of Sushen-deceased, it cannot be said that the circumstantial evidence, available on record, is consistent only with the hypothesis of the guilt of the accused.

10. Chandu Viswas, PW-1, further disclosed that the next day i.e. day when Tijamool visited him, he along with 3-4 other persons visited the house of Tijamool and asked about the whereabouts of Sushen. Then all the family members of the Tijamool attempted to scuffle with them and thereafter they came back home. This statement also does not fasten accused with this crime. Attempt to scuffle is nothing, to hold accused guilty or to show his involvement in the crime. Even otherwise, during the course of his cross-examination, this very PW deposed that he does not remember the date as to when the accused came to his house; he does not remember the date and month as to when they went to the house of the Tijamool for enquiry and to know about the whereabouts of his deceased son. He further deposed that de does not

know the date, month or year when the family members of Tijamool attempted to scuffle with them. Thus, with this statement of PW-1, it cannot be said that the aforesaid statement of Chandu Viswas in any way affords a circumstantial evidence to fasten the accused with this guilt.

11. PW-1 further gave the story that he was having a land dispute with one Ajul Gaddi son of Sital Gaddi resident of Panchwan who is related to Tijamool. He also deposed that it came to his knowledge afterwards that Rs. 70,000/- were paid by Ajul Gaddi to Tijamool to eliminate his son. Thus, Tijamool along with Chetu and Naveen Lambu committed the murder of his son and buried his dead body in the choe of Bullowal. This story of dispute and payment of Rs. 70,000/- for killing the deceased was not told by PW-1 when his statement was recorded by the police. Also, there is not even an iota of evidence on the file to prove the same. In the absence of any evidence, the case of the prosecution that the father of the deceased was having enmity with one Ajul Gaddi or that he got his son killed by paying Rs. 70,000/- to Tijamool; remains wholly unproved on the file.

12. Of course, Chandu Viswas, PW-1, on seeing photographs of the dead body of his son Sushen Viswas in the newspaper had gone to the police station and identified his son from the photograph of his son and from the clothes of the deceased i.e. pant, vest and underwear, yet, this fact only proves that Sushen Viswas son of Chandu Viswas PW-1, has died and further that his dead body was half buried which was seen by PW-2 Bachittar Singh in the first instance and taken into police possession. So far as the person who committed this crime is concerned, there is not even an iota of evidence available on

record.

13. After the arrest of accused, he was interrogated by the police. On interrogation, he suffered disclosure statement, Ex. PM, to the effect that he along with one *Nepali* committed the murder of Sushen Viswas son of Chandu Viswas by strangulating him in the choe during night time by tying his hands and buried him by digging earth with spade; and spade was thrown at some distance of about 18-20 karams from the place where they buried dead body and further that he could demarcate the aforesaid place. The confessional part of his statement as recorded by the police; is not admissible in evidence. Of course, accused gave demarcation of the place from where the dead body was already recovered by the police, is in fact no incriminating circumstance against the accused as that place was already known to the police. When the dead body was recovered by the police on 10.10.2008, that very day spade and its wooden handle were also found at a distance of 18-20 karams from the dead body and the same were also taken into police possession, vide memo Ex. PE. Thus, demarcation of this place by the accused, later on, in pursuance with his disclosure statement Ex. PM; is also of no use. At least, it does not afford a circumstance of a conclusive nature nor can be said to be consistent only with the hypothesis of the guilt of the accused.

14. In fact, in pursuance with the disclosure statement, Ex. PM, nothing was got recovered by the accused which can be said to be belonging to the deceased. Even in this case, cause of death remained unproved. Dr. Jaswinder Singh, Medical Officer as PW-5 deposed that the cause of death, in this case, could not be ascertained as the body was in an advance stage of

decomposition. However, a cloth was tied around the neck. He also mentioned that the body was of a human being and sex of the person was of a male. The age of body from dental and skull sutures examination was approximate 25 to 30 years. The stature of the dead body from the bones was about 5'5". Thus, with this kind of evidence, available on record, we are of the considered view that in fact it is a case of no evidence. What to speak of circumstantial evidence. There is no last seen evidence available on the file nor there is any extra judicial confession or any kind of evidence so as to point towards the involvement of accused in this case.

15. For the reasons recorded above, finding merit in this appeal, the impugned judgment of conviction dated 31.01.2011 and order of sentence of the even date are set aside. This appeal is accepted. The accused is ordered to be acquitted of the charges for which he faced trial, if not required in any other case.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

14.12.2015

Waseem Ansari