

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal No.D-589-DB of 2010

Budh Ram @ Budhu and others

... **Appellants**

v.

State of Haryana

... **Respondent**

Date of decision: October 29, 2015.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

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

Present: Shri Aminder Singh, Advocate
amicus curiae, for the appellant.

Shri Vivek Saii, Assistant Advocate General,
Haryana for the respondent-State.

Raj Rahul Garg, J.

This appeal is directed against the judgment dated 24.12.2009 rendered by learned Additional Sessions Judge, Gurgaon whereby the appellant-accused were convicted for committing offence punishable under Sections 392, 302, 201 read with Section 34 of the Indian Penal Code (hereinafter mentioned as the IPC). Vide order of sentence dated 8.1.2010, each one of the accused-appellant was sentenced to undergo life imprisonment and to pay fine of Rs.50,000/- with default clause for committing offence punishable under Section 302/34 IPC; to undergo rigorous imprisonment for 7 years and to pay fine of Rs.5,000/- with default clause for committing offence punishable under Section 392/34 IPC and to

undergo rigorous imprisonment for a period of three years and to pay fine of Rs.5,000/- with default clause for committing offence under Section 201/34 IPC.

Brief facts of the prosecution case are like this that the police machinery was set in motion on 2.11.2006 when SI Tulsi Ram received a telephonic message from the Munshi of Police Station Sadar Gurgaon that a dead body was lying near 32nd milestone Boosting Station. On this information, he along with police officials reached there. There, he met Rider No.18 on which EHC Sher Mohammad and Constable Rakesh were present. There he noticed the dead body lying near the road in the ditches. He called Government Photographer and got the dead body photographed. He was told by the Rider that this information was given to them by a rickshaw puller whom they sent for searching about the relatives of the deceased. The Investigating Officer also sent the Riders for the search of the relatives of the deceased. The Investigating Officer further sent the dead body to General Hospital, Gurgaon.

On 3.11.2006, the rickshaw puller and the Rider No.18 came at the dead house at General Hospital, Gurgaon where the statement of Surender son of Gajadhar rickshaw puller was recorded as Ex.PN to the effect that he was a rickshaw puller ad during the night at about 8 p.m. he was going towards the South City chowk after leaving the passengers at 32 KM. He stopped his rickshaw for answering the call of nature. He started urinating at the patri (berm) of the road and then in the light of the passing-by vehicles, he spotted a person lying over there. He was not lying straight

but on his one side. He saw him minutely and found that blood was oozing out from his mouth. There was also injury on his right occipital region. His shirt was soaked in blood. He returned at 32 KM milestone where he found two policemen on a motorcycle and told them about the incident and accompanied them and pointed out that person to them. The dead was an unknown person. He also expressed that some unknown vehicle, while being driven rashly at a high speed, might have hit the person who might be coming on foot. After hitting, the driver of the said vehicle might have run away and may be that the victim might have fallen on one side after having a jump due to impact of the vehicle and on that account, he fell with his face downwards and might have received injuries. He also expressed that the accident might have occurred either that day or yesterday. That person was lying in a pit below the level of patri. He was not visible to the passers-by as the traffic on the road goes on high speed.

On this statement, formal FIR was recorded and a case under Sections 279/304-A IPC was registered. Inquest proceedings were completed. Statement of EHC Sher Mohammad and Constable Rakesh were recorded. Rough site plan of the spot was prepared as Ex.PNN. The Investigating Officer also searched about the relatives of the deceased but found nobody.

On 8.11.2006, post mortem of the dead body was got conducted. On 9.11.2006, HC Hemraj and constable Madan Lal came at the dead house along with the relatives of the deceased, namely, Sanjay and Ram Kailash Parsad. They identified the dead body of the deceased to be

that of Ranjit son of Lal Bahadur. Sanjay got recorded his statement on 10.11.2006 to the effect that his brother Ranjit was working in a factory known as KIWI, Sector 37, Gurgaon and that on 2.11.2006, he received a telephone from a friend of Ranjit that Ranjit was not reporting for his duty and then he started searching for his brother. The dead body was handed over to them vide receipt Ex.POO. On 10.11.2006, Constable Madan Lal handed over a sealed parcel containing clothes of the deceased given to him by the doctor and the same were taken into possession by the Investigating Officer vide memo Ex.PPP. The postmortem report was also handed over to the Investigating Officer. After going through the postmortem report, the case was converted into under Section 302/201 IPC as the cause of death was reported as asphyxia and strangulation. The offences under Sections 279/304-A IPC were deleted. Special report in this regard was also sent to the senior police officers.

On that very day, an information from Special Staff, Sector 10, Gurgaon was received that some accused had confessed about their involvement in commission of the present crime. Though the accused were under arrest in FIR No.1133/06 under Sections 302/201/34 IPC, Police Station DLF Gurgaon. Thereafter, the Investigating Officer reached the Special Staff whereby the Munshi handed over to him the disclosure statement of Parmod. Rohtash, Mukesh and Budhu accused.

On 16.11.2006, accused were produced before the Chief Judicial Magistrate, Gurgaon and after obtaining permission from the Chief Judicial Magistrate, they were joined in the investigation of this case.

On 21.11.2006, on interrogation, accused Rohtash @ Ballu @ Langoor son of Ved Pal suffered disclosure statement Ex.PH to the effect that on 1.11.2006, he along with Parmod @ Bhuru @ Bhuria son of Bijender Singh (acused), Mukesh @ Ghasar on of Omkar (accused) and Budh Ram @ Budhu son of Suraj Bhan (accused) jointly made a passenger board their Max vehicle No.HR-61-1154 from Rajiv Chowk for Manesar. That vehicle was driven by Mukesh. On account of traffic jam at Hero Honda crossing, they turned back their vehicle towards Rajiv chowk. After covering the culvert of Rajiv chowk, Mukesh started driving the vehicle at a slow speed and at that time, three of them started giving beatings to that person. He with the help of wheel pana available in the vehicle, gave a blow on the temple of that person. Thereafter Budhu caught hold of his hands and Parmod his feet and he (Rohtash) pressed ad strangulated his throat with the help of belt and then he was killed. Thereafter, on search of his person, they found Rs.620/- in the pocket of his pants. Apart from that, one pocket diary in which addresses and telephone numbers found written, was also found. He was having a bag. On checking, the bag was found containing one pat, one shirt and one towel in it. The aforesaid clothes were put again in the same bag. Belt which was used for the purpose of strangulation, was also put in the same bag. After murdering him, his dead body was thrown at a distance of one furlong from 32 KM stone towards Delhi side near the road in a pit so that people take it as a case of road side accident. He further disclosed that the aforesaid amount of Rs.620/- was spent by them on eating and drinking. Pocket diary was kept by him. On

the next day, i.e., on 2.11.2006, the same was kept near the Bar Beri garden while for making a telephone call which he ca get recovered by pointing out the place of concealment. The bag was kept by Parmod (accused) which he had thrown in manhole on their return journey in between Hero Honda Chowk and Subhash chowk and on other side of the road at that place, Budhu had thrown chappals of the deceased (black colour). This disclosure statement was signed by the accused. Constable Hawa Singh signed this as witness.

On interrogation, accused Parmod suffered disclosure statement Ex.PI so far as the manner in which he along with co-accused Rohtash, Mukesh and Budhu committed murder of deceased Ranjit. He also disclosed about throwing of bag containing clothes, belt, etc. of the deceased between Hero Honda chowk and Subhash chowk stating that he alone knows about that and can get the same recovered by giving nishahdehi. He also made disclosure statement regarding disposal of other articles in the same manner as stated by accused Mukesh.

Likewise, accused Mukesh suffered disclosure statement Ex.PJ narrating the manner in which the occurrence leading to the death of deceased Ranjit had taken place and further disclosed that he can give the nishandehi of the place from where they boarded the deceased and the place where they had thrown the dead body of the deceased after committing his murder. Accused Budhu, on interrogation, suffered disclosure statement Ex.PK to the same effect, as mentioned above, regarding the manner in which the preset offence was committed. He also disclosed that he had

thrown the black raxion chappals of the deceased between Subhash Chowk and Hero Honda chowk and can get the same recovered by giving nishandehi. He also disclosed that he can give nishandehi of the place from where they boarded the deceased and thrown dead body after committing his murder. He also disclosed that wheel pana was taken away by Parmod to his home. He also disclosed about disposal of other articles, as stated by accused Rohtash.

On the same day, in pursuance of his disclosure statement, accused Rohtash led the police party to the pointed place and got recovered one pocket diary in which there was a railway ticket also from the disclosed place. The pocket diary and railway ticket were converted into a parcel and sealed with seal 'DR' and taken into possession as Ex.PN. Ram Kailash Parsad and ESI Sardara Singh signed the memo. Rough site plan of the place of recovery was prepared as Ex.PQQ. Thereafter, accused Parmod led the police party to the disclosed place and got recovered one bag containing clothes and belt of the deceased. The same were taken into possession vide memo Ex.PM/1 after converting them into parcel and sealed with the seal DR. Thereafter, accused Budhu got recovered one pair of chappals of the deceased in pursuance of the disclosure statement. The aforesaid pair of chappals was also converted into sealed parcel, sealed with the seal DR and taken into possession vide memo Ex.PM/2. Rough site plan of the place of recovery was prepared as Ex.PRR.

In pursuance with their disclosure statement, all the four accused demarcated the place turn by turn from where they boarded the

deceased Ranjit and the place where they had thrown the dead body of the deceased after committing his murder.

On 25.11.2006, the Investigating Officer had taken the belt of the deceased from MHC of the police station. By moving application Ex.PM to the Medical Officer, GH Gurgaon, his opinion was obtained as to if death of the deceased could be caused with the help of the aforesaid belt or not, to which the doctor opined vide endorsement Ex.PN/1 after seeing the belt that possibility of death by strangulation with the belt (ligature material) cannot be ruled out. Thereafter, the belt was re-sealed and deposited with the MHC of the Police Station.

On 26.11.2006, statement of ASI Shobha Ram and Head Constable Om Parkash of Police Station Bilaspur were recorded. ASI Shobha Ram, the Investigating Officer of FIR No.387/06 under Sections 302/201/34 IPC, PS Manesar, stated that a wheel pana was recovered by him from accused Parmod from his house in that case. This wheel pana was also used by the accused for the commission of the present crime, as such the same was taken into possession by the police in this case.

On 27.11.2006, the Investigating Officer took the aforesaid wheel pana from MHC Surender and took the same into possession after preparing the memo Ex.PU. The same was taken into police possession vide memo Ex.PU on 27.11.2006 from MHC Surender of PS Manesar.

On 28.11.2006, by moving application Ex.PO before Medical Officer, GH, Hospital along with wheel pana, opinion of the doctor was to be sought. However, the said doctor was not available on that day,

therefore, on the next day, i.e., on 29.11.2006, Medical Officer was contacted who, vide endorsement Ex.PO/1 opined that possibility of injury sustained by the deceased on the occipital region cannot be ruled out. The wheel pana was again deposited with the MHC of PS Manesar. On 4.12.2006, sketch site plan of the place was got prepared from draftsman Shubam Kumar as Ex.PB.

On 13.12.2006, Sanjay, brother of the deceased identified the pant, shirt, towel, belt and bag besides chappals, pocket diary and railway ticket as belonging to his brother Ranjit vide identification memo Ex.PA before the Executive Magistrate, Gurgaon. On 29.12.2006, Mahabir Singh, DSP (Crime) went to Dr. Kuldeep Singh, Senior Medical Officer and requested him to conduct the inspection of Max jeep HR-61-1145 parked in Police Station DLF Gurgaon in FIR No.1133 dated 4.11.2006 under Section 302/201 IPC. Accordingly, Dr. Kuldeep Singh inspected the jeep after reaching there and took out six blood stained portions of jeep from various points. The same were converted into five parcels and sealed with the seal of 'SC' and were taken into possession vide memo Ex.PG. The seal was handed over to SI Mohan Singh after use. The case property was deposited with the MHC of the Police Station.

The accused were also subjected to brain mapping test from FSL, Bengaluru. Report in this regard is Ex.PSS/1 whereas brain mapping test is Ex.PSS/2 and CD is Ex.PSS. As per this report, the accused were not deposing truthfully and further that they had the knowledge of the crime.

After completion of the necessary investigation, the challan was

put in the court against the accused.

Finding a prima facie case against the accused, they were charge sheeted for committing offences punishable under Section 392, 302, 201 read with Section 34 IOPC. After taking the entire prosecution evidence, statements of the accused under Section 313 Cr.P.C. was recorded wherein they denied each prosecution allegation and pleaded their innocence.

After hearing both the sides and perusing the evidence and material coming on record, the trial court recorded the impugned judgment of conviction and the order on sentence, as mentioned in the earlier part of the judgment.

We have heard Shri Aminder Singh, Advocate, learned amicus curiae, appearing on behalf of the appellant, and learned Shri Vivek Saini, Assistant Advocate General, Haryana, for the State besides going through the entire record of this case.

This is a case of serious nature. The appellant-accused are serial killers. They are involved in 26 murder cases, as is evident from their disclosure statements Ex.PC, Ex.PC/1 and ex.PC/2 recorded in FIR No.1133/-6 dated 4.11.2006 under Sections 302/201 IPC, Police Station DLF Gurgaon. In these disclosure statements, they had also confessed to have committed the present crime.

The present case is the one based on circumstantial evidence. Before convicting a accused on the basis of circumstantial evidence, the parameters laid down in various judgments rendered by the Apex Court

have to be taken into consideration.

As held by the Apex Court in Arvind @ Pappu Vs. State (Delhi Administration), 1999(2)R.C.R.(Criminal), 810, these parameters may be enumerated as under:-

- (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.*

Surender PW12, a rickshaw puller, saw the dead body of deceased Ranjit in the first instance. In his statement Ex.PN, he stated that at about 8 p.m. while he was going to South City crossing after leaving the passengers at 32nd milestone, he stopped his rickshaw there and while he was passing urine on the patri of the road; in the light of the passing by vehicles, he spotted the dead body and then gave this information to police rider. EHC Sher Mohammad appeared as PW3 and deposed that he along with Constable Rakesh was present near 32nd Milestone at about 8 p.m. when rickshaw puller Surender told them that one dead body was lying near

the road at some distance. He and Rakesh had gone to the spot and found the dead body lying over there. They informed the Control Room about it. SI Tulsi Ram PW30 the Investigating Officer of the case also proved this fact by stating that on receipt of telephonic message from the Munshi of the Police Station Sadar Gurgaon that a dead body was lying near 32nd milestone, NH-8, he along with Constable Sunil Kumar reached the spot. There, he met Rider No.18 on which EHC Sher Mohammad and Constable Rakesh were present and there he noticed that a dead body was lying near the road in the ditches. SI Tulsi Ram the Investigating Officer further deposed about obtaining of photographs of the dead body and sending the same to GH Gurgaon after arranging the vehicle. He also deposed that he had also sent the Rider for the search of the relatives of the deceased.

Kanwar Singh Photographer PW13 deposed that he had taken the photographs of the dead body Ex.P12 to P-14, the negatives of which are Ex.P9 to Ex.P11.

The Postmortem of the dead body was conducted on 8.11.2006. On 9.11.2006, HC Hem Raj and Constable Madan Lal along with the relatives of the deceased, namely, Sanjay PW32 and Ram Kailash Parsad PW31 came at the dead house where Sanjay, brother of the deceased, and Ram Kailash Parsad identified the dead body of the deceased as that of Ranjit. The dead body of Ranjit was also handed over to them vide receipt Ex.POO for cremation. Sanjay PW32 and Ram Kailash Parsad PW31 categorically stated that they had identified the dead body of his brother Ranjit in the dead house and further that they had received the dead body of

Ranjit for cremation and the dead body was cremated by Municipal Corporation, Gurgaon thereafter. SI Tulsi Ram PW30 also corroborated this fact. Thus, with their statements, it is established on the file that the dead body recovered in this case is that of Ranjit, brother of Sanjay.

SI Tulsi Ram PW30 proved the factum of receipt of message from Special Staff Sector 10, Gurgaon while deposing as PW30 that he received the message to the effect that the accused, who were being interrogated in case FIR No.1133/06 under Sections 302/201 IPC, had confessed their involvement in the present case, i.e., regarding murder of Ranjit. The Investigating Officer after obtaining permission of Chief Judicial Magistrate, Gurgaon joined accused Rohtash, Parmod, Mukesh and Budhu (present appellants) in the investigation of this case and interrogated them.

With the statements of SI Tulsi Ram PW30 and that of Constable Hawa Singh PW9, the prosecution has proved the disclosure statements of accused Rohtash, Parmod, Mukesh and Budhu as Ex.PH, PI, PJ and PK regarding the manner of giving lift to deceased Ranjit in vehicle No.HR-61-1154, strangulating him and then taking out articles from his pocket, i.e., a sum of Rs.620/- and further disclosing the places where they had thrown the bag containing clothes and belt of the deceased and pair of his chappals and further that they alone knew about the same and can get the same recovered by giving nishandehi. Further with the statements of SI Tulsi Ram and Sardara Singh PW11, the prosecution proved the factum of recovery of pocket diary at the instance of accused Rohtash who got the

same recovered after digging earth at Bar Beri Bagh near Safeda tree which was taken into possession vide memo Ex.PM and they also proved the recovery of bag containing clothes and belt of the deceased from one 'gutter' near Rajiv chowk at the instance of accused Parmod vide memo Ex.PM/1 and also proved the recovery at the instance of accused Budhu in pursuance with his disclosure statement of one raxion chappals from the disclosed place vide memo Ex.PM/2. They also proved the fact that the appellants (accused) gave nishandehi turn by turn of the place from where they boarded the deceased Ranjit and also the place where they had thrown the dead body of Ranjit, i.e., 32nd milestone by proving demarcation memo Ex.PM/3.

The aforementioned recovered articles from the possession of the accused-appellants were got identified from Sanjay PW32, brother of the deceased by PW1 Naib Tehsildar Balraj Singh, who conducted identification of the articles. Mahabir Singh PW28 also proved the factum of identification of the pocket diary, railway ticket, bag, clothes and belt of the deceased and also chappals of the deceased recovered from the possession of appellant accused Rohtash, Parmod and Budhu respectively by Sanjay brother of the deceased as the one belonging to his brother Ranjit. The aforesaid articles were mixed in other articles of the like nature and thereafter Sanjay PW32 identified the same as the one belonging to his brother Ranjit vide memo Ex.PM/4. Balraj Singh Naib Tehsildar PW1 also proved this fact. Thus, with the identification of these articles by Sanjay, it stands proved on the file that the aforesaid articles Ex.P1 to P8, which were

recovered from the possession of the appellant-accused, were belonging to deceased Ranjit. Thus, recovery of aforesaid articles from the possession of the accused also points towards their involvement in this crime.

The accused in their disclosure statements disclosed that they had killed the deceased by way of strangulation with the help of belt of the deceased. This fact stands proved. Though the disclosure statement of the accused is not admissible in evidence yet with the statement of PW14 Dr. Mukesh Rampal, it stands proved that deceased Ranjit had died on account of asphyxia caused by strangulation. This doctor also deposed that there was fracture of Hyoid bone and there was also injury to vital organ, i.e., brain. When the belt was shown to the doctor for obtaining his opinion as to if the possibility of death by strangulation from the aforesaid belt was there, the doctor opined vide endorsement Ex.PN/1 on the application Ex.PN/1 that possibility could not be ruled out in this case. Likewise, the wheel pana Ex.P15 when shown to this doctor for seeking his opinion regarding possibility of injury sustained by the deceased over his occipital region, this doctor opined vide endorsement Ex.PO/1 on application Ex.PO/1 that the possibility could not be ruled out. This wheel pana was taken into possession by ASI Shobha Ram PW10 during investigation of case FIR No.387/06 of PS Manesar. In that case, accused Parmod got recovered the aforesaid pana. This fact was disclosed to SI Tulsi Ram, the Investigating Officer of this case by ASI Shobha Ram. His statement was recorded in this case to the aforesaid effect on 26.11.2006 and thereafter on 27.11.2006. the Investigating Officer of this case took the aforesaid wheel

pana from MHC Surrender into possession vide memo Ex.PU and then produced the same before the doctor Mukesh Rampal PW14 and obtained the aforesaid opinion. Thus, with the statements of PW30 SI Tulsi Ram and PW10 ASI Shobha Ram, coupled with the statement of PW14 Dr. Mukesh Rampal, the involvement of aforesaid wheel pana Ex.P15 stands proved in this case.

The accused were also subjected to brain mapping test from FSL, Bengaluru. Brain mapping test is Ex.PSS/2 containing four pages whereas polygraphic examination report is Ex.PSS/1. CD Ex.PSS has also been tendered into evidence whereby it was reported that the accused were not deposing truthfully and they had the knowledge of the crime. This fact also goes against the accused.

Counsel for the appellants has tried to convince this Court that the accused have been implicated falsely in this case, in fact, they have not committed this crime. This crime was committed by some unknown persons. There is no direct evidence available against them. Even circumstances do not fix them in this case. They have also been involved in other cases only in order to solve their unsolved cases.

This argument is devoid of any force, particularly in view of the above discussed circumstantial evidence available on the file which conclusively proves all the links in the chain and if we take all the circumstances cumulatively, they lead to only conclusion consistent with the guilt of the accused.

For the reasons recorded above, finding no merit in this appeal,

and as such maintaining the judgment of conviction and the order of sentence, as stated above, this appeal is dismissed.

October 29, 2015.

kadyan

[**Raj Rahul Garg**]
Judge

[**Hemant Gupta**]
Judge