

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

1. **Criminal Appeal D-98-DB of 2011**
Date of Decision: February 10, 2015.

Raju @ Bona and another		Appellants
	Versus	
State of Haryana		 Respondent

2. **Criminal Appeal D-244-DB of 2011**

Noorjahan @ Moti		Appellant
	Versus	
State of Haryana		 Respondent

3. **Criminal Appeal D-363-DB of 2011**

Ombir @ Salim		Appellant
	Versus	
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE DR. JUSTICE SHEKHAR DHAWAN

Present : Mr. B.R.Gupta, Advocate for the appellants
(in Criminal Appeal D-98-DB of 2011)

Ms. Savita Sexana, Advocate as Amicus Curiae
for the appellants
(in CrI. Appeals D-244-DB of 2011 & D-363-DB of 2011)

Mr. Randhir Singh, Addl. A.G., Haryana.

T.P.S.MANN, J.

The appellants, namely, Raju @ Bona, Sonu,
Noorjahan @ Moti and Ombir @ Salim, along with Shabu @
Sabuddin @ Dabar and Anish @ Bablu were tried for committing

offences punishable under Sections 120-B and 109 read with Section 395 IPC, Section 365 read with Section 34 IPC and Sections 120-B, 395, 302 read with Sections 34 and 120-B and 201 IPC. Vide judgment and order dated 16/24.12.2010, learned Additional Sessions Judge, Sonapat, acquitted Shabu @ Sabuddin @ Dabar and Anish @ Bablu of the charges against them. The four appellants were convicted under Section 365 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo simple imprisonment for six months. They were further convicted under Section 395 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo simple imprisonment for one year. They were further convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- each and in default of payment of fine to undergo simple imprisonment for one year. They were also convicted under Section 201 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo simple imprisonment for six months. All the sentences were ordered to run concurrently. The period spent by them in custody during the investigation/trial, if any, was ordered to be set off against the substantive sentences of imprisonment.

Briefly stated, case of the prosecution is that Niamuddin, brother of complainant-Ikramuddin started on 1.10.2006 at about 2.00 a.m. from Osram Factory, Sonapat for Ghaziabad (U.P.) after loading his Truck No. HR-55A-0785. The same day, after unloading the truck, Niamuddin started for Sonapat. Ved Parkash @ Pappu was driving his vehicle No. HR-46A-1903 behind the truck of Niamuddin. After the vehicles reached Bahalgarh Chowk, Niamuddin, turned his vehicle towards Delhi on G.T. Road. Similarly, Ved Parkash @ Pappu also turned his truck towards Delhi and going a short distance stopped his truck so as to wait for the truck of Niamuddin. As the truck of Niamuddin did not reach, Ved Parkash @ Pappu presumed that Niamuddin might have gone for refuelling the truck and, accordingly, returned to Sonapat but Niamuddin did not return. Both complainant-Ikramuddin and Ved Parkash @ Pappu left for tracing Niamuddin and his truck. They found truck of Niamuddin parked in Tatiri Mandi, Bagpat (U.P.) and the police had already taken the said truck into possession. According to the complainant, his brother-Niamuddin had been kidnapped alongwith the truck by some unknown persons. Accordingly, he made statement Ex.PH before ASI Dalbir Singh, Incharge, Police Post, Bahalgarh on 5.10.2006 at about 1.15 p.m., at Bahalgarh Chowk on the G.T. Road. On its basis FIR No. 220 dated 5.10.2006 under Section 365 IPC was registered at

Police Station, Rai Sonepat, at 1.45 p.m. by ASI Jai Parkash.

During the investigation of the case, the appellants and their co-accused were arrested. On 7.10.2006, dead body of Niamuddin was found lying in the area of Rest House, Larsoli. The dead body was subjected to inquest and, thereafter, sent for postmortem.

After completion of investigation and presentation of challan, followed by commitment of the case to the Court of Sessions, the appellants and their co-accused were charged for committing the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined Nasruddin as PW1, Kalwa as PW2, Momin Malik, Advocate as PW3, complainant-Ikramuddin as PW4, SI Ishwar Singh as PW5, Dalbir Singh Patwari as PW6, ASI Jagdish Rai as PW7, ASI Gugan Singh as PW8, SI Raj Singh as PW9, Momin as PW10, Jamshed Ali as PW11, ASI Mahender as PW12, Dr. Vijay Pal Khanagwal as PW13, ASI Jai Bhagwan as PW14, Constable Surender Singh as PW15, HC Sukhbir Singh as PW16, Inspector Rajinder Singh as PW17 and SI Dalvir Singh as PW18 and in documentary evidence placed on record various documents.

When examined under Section 311 Cr.P.C. all the accused claimed to be innocent. In defence, Prem was examined as DW1.

The trial Court acquitted Shabu @ Sabuddin @ Dabar and Anish @ Bablu of the charges against them whereas the appellants were convicted and sentenced, as mentioned above.

Learned counsel for the parties have been heard and the evidence brought on record scanned with their able assistance.

PW1 Nasruddin, brother of deceased-Niamuddin testified that on the night intervening 30.9.2006 and 1.10.2006 at about 2.00 a.m. Niamuddin proceeded from Osram Factory, Sonapat in Truck No. HR-55A-0785 for Ghaziabad. On the same day, in the evening, after unloading the truck at Ghaziabad, he was returning to Sonapat. Niamuddin along with his truck had come up to Bahalgarh. Later on, it could not be known as to where Niamuddin went. Search was made for Niamuddin and his truck. The truck was found parked on the night of 1/2.10.2006 near Tatiri Mandi, Bagpat (U.P.), but no trace of his brother could be found. On 7.10.2006, he along with his nephew Sayyad Ali, came to Sector 7, G.T. Road, in search of his brother where they learnt that police had received information about dead body of some unknown person lying in front of PWD Rest House at Larsoli. Accordingly, he and Sayyad Ali went to that place and identified the dead body to be of his brother-Niamuddin. There were injury marks on the left side of his face and nose. There was also a mark of injury on his throat with a Parna. An injury mark on

his abdomen near navel caused by some sharp edged weapon was also noticed. The dead body was wearing HMT wrist watch, which was taken into possession vide memo Ex.PA.

PW2 Kalwa testified that on 18.10.2006 at about 1/2 p.m., he was going towards Meerut from village Sindawali on his bike and noticed Haryana Police at a brick kiln on Rohta road. Police was having certain papers which were got recovered from the brick kiln by accused Ombir. The papers included permit, RC, Insurance and fitness certificate pertaining to vehicle No.HR-55A-0785. Accused-Ombir also identified the place where they had parked the vehicle. Ombir further led the police party to Gauripur turn, where he alongwith others had boarded the truck. Spot identification memo was prepared in this regard. Ombir then led the police party to Larsoli where the dead body had been thrown. He also led the police party to the place near petrol pump where they had washed the blood stains from the truck.

PW3 Momin Malik testified that on 2.11.2006, he joined the police party which had already made search at Ganaur. The police then made search and found accused-Noorjahan @ Moti who was bit fearful. When asked about the deceased driver and about her involvement she could not give satisfactory reply. Later on, she disclosed that she was involved and Ombir was driving the truck when the deceased was strangulated by putting a cloth around his neck from behind. She also stated about the

involvement of her co-accused. She then led the police party to her place from where she got recovered Parna stained with blood. She identified various places, i.e. where the truck was stopped by show of hand and Parna; where the blood was washed from the truck; where two persons had put the cloth around the neck of deceased; and where accused-Ombir had driven the truck and Ibban and Sonu had given knife blows. She also identified the place near Larsoli Rest House where dead body was thrown after killing the deceased.

PW4 Ikramudin, the complainant and brother of deceased-Niamuddin, reiterated the version given by him while lodging the FIR. He also deposed regarding recovery of the truck at Thakur Hotel in Tatiri Mandi, at Bagpat-Meerut Road. His brother was not found in the truck but there were blood stains in the truck cabin.

PW5 SI Ishwar Singh Rathee, deposed that he had prepared final report under Section 173 Cr.P.C.

PW6 Dalbir Singh, Patwari proved the scaled site plan Ex.PK made by him at the instance of SI Dalbir Singh after going to Larsoli.

PW7 ASI Jagdish Rai, PW8 ASI Gugan Singh, PW9 SI Raj Singh, PW12 ASI Mahender, PW14 ASI Jai Bhagwan, PW15 Constable Surender Singh, PW16 HC Sukhbir Singh, PW17 Inspector Rajinder Singh and PW18 ASI Dalbir Singh,

through their respective testimonies brought on record the investigation part of the case.

PW10 Momin testified that on 13.10.2006, he learnt about the arrest of Raju @ Bona, Shabu @ Sabuddin @ Dabar and Ombir @ Salim and on reaching Police Station, CIA, Sonapat, he witnessed making of disclosure statements by the three accused.

PW11 Jamshed Ali testified that on 29.9.2006, when he was going to Niwara from Dola village, Babber met him on the way. When they proceeded towards Niwara, he found three boys sitting near Khal Ki Pullia. Those boys were Ombir, Bablu and Sabhu. Ombir, asked Bablu that he will loot the truck and after the truck is empty it would be destroyed.

PW13 Dr. Vijay Pal Khanagwal, Professor, PGIMS, Rohtak, testified that he conducted the postmortem on the dead body of Niamuddin on 7.10.2006. He proved copy of postmortem report as Ex.PY. He tendered into evidence his affidavit Ex.PX.

When examined under Section 313 Cr.P.C. all the accused claimed to be innocent and falsely implicated in the case.

In defence, the accused examined Prem, father of Sonu accused, who stated that his relations with his neighbour Hardwari were strained. The name of his son was Naresh whereas his nick name was Sonu. Only Hardwari knew him by his

nick name and, accordingly, Hardwari, who was police informer, had implicated his son.

The case is based upon circumstantial evidence. The prosecution is required to bring on record definite evidence, which could point towards the guilt of the appellants. However, the prosecution has failed to complete the chain of circumstances in this case and, therefore, no conclusion can be arrived at that in all probability, the crime was committed by the appellants and none-else. The learned trial Court has already acquitted Shabu @ Sabuddin @ Dabar and Anish @ Bablu by holding that the testimony of PW11 Jamshed Ali in that regard could not be believed.

The occurrence in question is stated to have taken place on the night intervening 30.9.2006 and 1.10.2006 whereas the matter was reported to the police on 5.10.2006 when complainant Ikramuddin made statement before ASI Dalbir Singh at about 1.15 p.m. On its basis FIR was registered at 1.45 p.m. There is no satisfactory and convincing explanation in regard to the inordinate delay in the lodging of the report with the police. On the other hand, it can safely be held that the dead body of Niamuddin was firstly recovered and, thereafter, after due deliberations and consultations, complainant-Ikramuddin made statement before the police.

According to the prosecution, Ved Parkash @ Pappu,

who was driving his vehicle behind the truck driven by the deceased, when the deceased was allegedly kidnapped and his truck taken into possession, has not been examined by the prosecution. The police failed to get the dead body photographed in order to confirm its identity. The wrist watch said to be worn by the deceased was not having any specific mark from which it could be inferred that it belonged to the deceased. PW13 Dr. Vijay Pal Khanagwal who conducted the post-mortem on the dead body had mentioned in the post-mortem report that the vital parts of the dead body were putrefied and in such a situation, the identification could not be possible.

The recovery of blood stained parna pursuant to the disclosure statement suffered by Noorjahan is nothing but a crude padding on the part of the prosecution. Though the house of Noorjahan from where the Parna was recovered, was situated in a thickly populated area, but no attempt was made by the Investigating Officer to associate independent witnesses. PW3 Momin Malik, who had allegedly witnessed the recovery was related to the complainant and, thus, his testimony could not be believed.

The name of Sonu appellant in the school record stood mentioned as Naresh Kumar. While being examined under Section 313 Cr.P.C., Sonu stated that one Hardwari, who was resident of his Municipal Ward and a police informer had

Criminal Appeal D-98-DB of 2011

-:11:-

implicated him in the case as his father was inimical towards said Hardwari. The name of Sonu appellant stood recorded as Naresh in the school records, Hardwari was the one, who knew him by his nick name only and under these circumstances, possibility could not be ruled out of Sonu appellant being falsely implicated in the case at the instance of Banwari.

In view of the above discussion and while appreciating the evidence of the prosecution, this Court has no other option but to hold that the prosecution has failed to prove its case against the appellants beyond reasonable doubt.

Resultantly, all the three appeals, i.e. Criminal Appeals D-98-DB of 2011, D-244-DB of 2011 and D-363-DB of 2011 are accepted, impugned judgment of conviction and sentence is set-aside and the appellants are acquitted of the charges against them.

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

February 10, 2015
amit rana

(SHEKHAR DHAWAN)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No