

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Appeal-D No.152-DB of 2015(O&M)

Date of Decision: March 31 , 2015.

Raj Kumar

..... APPELLANT (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Mohd. Yousaf, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Learned Sessions Judge, Jalandhar vide impugned judgment dated 14.10.2014 has acquitted respondent No.2 – Amit Kumar and respondent No.3 – Smt. Asha of the charges of offences punishable under Sections 302/201 IPC while convicting them for the offence punishable under Section 411 IPC.

Complainant – Raj Kumar, aggrieved of the acquittal of the abovesaid respondents for the offences punishable under Sections 302/201 IPC has preferred the present appeal impugning judgment dated 14.10.2014 to that extent.

Brief facts of the case are that deceased Chaman Lal left his home

at about 12.30 p.m. on 18.01.2013 on his motorcycle bearing registration No.PB08-BN-2182 for attending a marriage function. Before leaving, he had consumed some wine. When he did not return home, his son Raj Kumar (PW1) and son-in-law Natwar Ballu (PW4) lodged a DDR No.18 dated 19.01.2013 (Ex.PW1/A) at about 5.35 p.m. at police station Sadar Jalandhar in respect to missing of Chaman Lal. Raj Kumar and Natwar Ballu were informed by the police officials on 19.01.2013 itself that the motorcycle driven by Chaman Lal was located at Damoria bridge. It was lying at Police Post Surya Enclave. The same was handed over to the complainant and Natwar Ballu on the same day.

Dead-body of an unknown person was noticed by one Om Parkash son of Karam Chand on 22.01.2013 near the dairy complex Jalandhar in the drain water. Om Parkash suffered a statement (Ex.PW3/A) to the effect that a man aged about 50 years on probably slipping in the drain had died. Proceedings under Section 174 Cr.P.C.were initiated. On being informed about the recovery of a dead-body of an unknown person, Raj Kumar and Natwar Ballu identified the dead-body to be that of Chaman Lal on 22.01.2013 at Civil Hospital. They suffered statements (Ex.PW3/F and Ex.PW3/G) that death of Chaman Lal had occurred due to an accident and they did not suspect anyone nor any foul play.

As per post-mortem report (Ex.PW2/B) cause of death is neurogenic shock due to head injury which was ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Viscera was sent for chemical examination. Organo phosphorus compound was detected in the viscera by the chemical examiner (Ex.PW2/A). As per opinion of the Medical

Board consisting of Dr.Arvinnder Singh Mann, Dr. Kamal Gupta and Dr. Satinder Kaur, primary cause of death was neurogenic shock due to injury described in the post-mortem report and secondary cause of death can be poisoning. Probable time between the injury and death was four hours and between death and the post-mortem examination was four days.

Complainant – Raj Kumar accompanied by Natwar Ballu suffered a statement (Ex.PW1/B) on 24.01.2013 that he suspects that some unknown and unidentified persons had committed his father's murder. On the basis of this statement, FIR No.40 dated 24.01.2013 (Ex.PW10/B) was registered under Sections 302/201 IPC against unknown persons.

In a peculiar turn of events PW4 Natwar Ballu suffered a statement on 29.01.2013 that he had last seen the deceased (Chaman Lal) in the company of accused Amit Kumar and Smt. Asha i.e., respondents No.2 and 3, on 18.01.2013 at about 7.30 p.m. Both the accused were taking the deceased on a motorcycle bearing registration No.PB08-BN-1253 driven by Amit Kumar. Chaman Lal was sitting between Amit Kumar and Smt. Asha. Natwar Ballu asked them to stop but they paid no heed. He thought that the accused were taking Chaman Lal to the latter's house. Missing report regarding Chaman Lal was lodged by him alongwith Raj Kumar on 19.01.2013 and dead-body was recovered thereafter.

PW1 Raj Kumar also suffered a supplementary statement on 01.02.2013 to say that he had given a wrong number of the motorcycle driven by his father. His father Chaman Lal had been wearing a gold bracelet, gold chain and a watch golden colour make Titan when he left the house on

18.01.2013. This information was disclosed to him by his mother Smt. Rani.

Accused Amit Kumar and Smt. Asha were arrested. A gold bracelet weighing four Tolas (40 grams) was recovered from the pocket of Amit Kumar's shirt. On a disclosure statement made by Amit Kumar, one watch make Titan was recovered from the house of Smt. Asha in the box-bed as well as a blood-stained brick near the drain. On a disclosure by Smt. Asha, a gold ring, gold chain, PAN card and a purse containing ₹150/- belonging to the deceased alongwith the clothes worn by the accused at the time of occurrence were recovered from the box-bed in her house. A blood stained Chunni/Dupatta was also recovered therefrom.

As per the statement of Charanjit Singh @ Chadha recorded on 11.02.2013, accused allegedly suffered an extra-judicial confession before him on 01.02.2013 confessing to the murder of Chaman Lal. However, Charanjit Singh @ Chadha has not supported the prosecution version and has denied the accused ever having made such a statement.

Charges were framed against the accused for the commission of offences punishable under Sections 302/201 IPC to which they pleaded innocence and claimed trial.

Learned trial court on appreciation of evidence on record concluded that prosecution has failed to prove the commission of offences as alleged beyond the shadow of reasonable doubt. Respondents-accused were acquitted of the charges under Sections 302/201 IPC extending the benefit of doubt to them but they were found guilty for the commission of offence punishable under Section 411 IPC.

Learned counsel for the appellant vehemently argues that once the trial court has concluded the respondents to be in possession of the articles belonging to the deceased, there is no justification for acquitting them for offences punishable under Sections 302/201 IPC. He further submits that blood-stained half brick and Chunni/ Dupatta with which Chaman Lal was strangled have been recovered at the instance of the accused thereby, pointing to their guilt. The chain of events and circumstances is complete in this case and lends no other hypothesis except the guilt of the accused persons. It is submitted that the last seen evidence has been wrongly ignored. Trial court has, thus, gravely erred in acquitting the accused.

Having heard learned counsel for the appellant, we find no ground to interfere in the impugned judgment acquitting the accused of the charges punishable under Sections 302/201 IPC.

Reliance on the statement of PW4 Natwar Ballu to prove the factum of the deceased being last seen in the company of respondents-accused is uncalled for. It is a matter of record that said Natwar Ballu, who is the son-in-law of the deceased, had accompanied complainant PW1 Raj Kumar since the very beginning when they had found Chaman Lal (deceased) to be missing. There is not even a whisper of the deceased being last seen in the company of the accused on 18.01.2013 by him at any point of time before 29.01.2013. In fact, PW4 Natwar Ballu as well as complainant had stated on 22.01.2013 that they did not suspect any foul play and death of Chaman Lal had taken place due to an accident. There is no explanation for this witness not having revealed this vital information at the very beginning. Subsequent version comes to the fore

for the first time on 29.01.2013. Therein PW4 Natwar Ballu states that he even asked the accused who were taking Chaman Lal to stop but they did not. He had noted the number of motorcycle but surprisingly never revealed these facts to anyone. His conduct is decidedly unnatural and shatters his credibility. Furthermore, deceased was last seen in the company of the accused on 18.01.2013. As per the post-mortem report probable time which elapsed between death and post-mortem examination was four days. Post mortem was conducted on 23.01.2013 at 12.45 noon. Thus death, as per the Medical Board, occurred on about 20.01.2013. There is no evidence on record to indicate the deceased being seen in the company of the accused in the interregnum. It would thus be unsafe to rely upon this evidence to convict the accused for the offence of murder of Chaman Lal.

Similarly, recovery of the gold jewellery and a watch of the deceased Chaman Lal from the accused is not indicative of their having murdered Chaman Lal. Recovery of the blood stained-brick or Chunni/Dupatta does not connect the accused with the commission of offences as alleged, in the facts and circumstances of the case. There is no injury or mark on the neck of the deceased which points to strangulation. Cause of death is opined to be neurogenic shock due to injury on the forehead. There is nothing on record to indicate that the injury on the deceased was caused by the said brick at the instance of accused – Amit Kumar.

Contention of the learned counsel for the appellant is that failure of the prosecution agency to compare the blood-stained brick as well as the clothes with the blood group of the deceased, cannot be of any benefit of the accused

persons and presence of blood stains on the said articles are enough to connect the accused with the case in hand. This contention on the face of it is untenable and rejected. Trial court has succinctly dealt with these aspects in detail which call for no interference whatsoever.

It is a settled position that acquittal cannot be set aside only on the possibility of another opinion in the facts and circumstances of a case. Learned counsel for the appellant is unable to point out any illegality, perversity or infirmity in the acquittal of respondents-accused of the charges for the offences punishable under Sections 302/201 IPC. There is no substantial, strong or compelling reason to set aside their acquittal under Sections 302/201 IPC vide the impugned judgment dated 14.10.2014 passed by the learned Sessions Judge, Jalandhar.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 31, 2015.
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