

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-798-DB of 2002

Date of Decision : September 29, 2015

Manoj

....Appellant

VERSUS

State of Haryana

...Respondent

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

Present : Mr. Anil Shukla, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

Appellant-Manoj and his co-accused Jasbir and Rajender @ Rajal were charged for commission of offence punishable under Sections 302/34 IPC for intentionally causing the death of Krishan son of Lillu Ram on 25.8.1999 in furtherance of their common intention. Vide judgment dated 16.9.2002, learned Sessions Judge, Sonipat held all the three accused guilty of the aforementioned charges and vide order dated 5.10.2002, sentenced them to undergo imprisonment for life and to pay a fine of R.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months.

Aggrieved of his conviction and sentence, appellant-Manoj filed the present appeal, his co-accused Rajender @ Rajal filed Criminal Appeal No.D-700-DB of 2003, while Jasbir filed Criminal Appeal No.D-799-DB of 2002. The appeals filed by Rajender @ Rajal and Jasbir have already been disposed of on 19.3.2015 and 29.9.2015, respectively, as having abated on account of their death.

As per the prosecution, Smt. Birmati @ Biro got recorded her statement (Ex.PG) with the police that she was resident of village Kalupur and working as a labourer. On 24.8.1999 at about 7.30 a.m. she, alongwith her husband Krishan and children, was present in the house. At that time, accused Rajender @ Rajal, resident of Rohat, but at that time a resident of Dharam Colony, Sonipat came to her house and asked her husband to accompany him for an outing. Accordingly, her husband left with Rajender @ Rajal on his scooter. At about 11/12 o'clock, Sundi @ Dharambir son of Rati Ram, resident of village Kalupur informed her that Krishan was lying in Dahiya Colony and she should go there and bring him home. She left all alone and noticed her husband lying near the road in an empty plot. He was breathing heavily. She brought him home by putting him in a rickshaw with the help of labourers. However, her husband died after a few minutes. When she had examined him on her own, she did not find any injury on his head. Only two bluish marks and two pimples were noticed on the belly. At that time, her brother-in-law (Jeth) was not there and so she waited for him. Then she, alongwith her brother-in-law Mahavir Singh, appeared before the police and got her statement recorded.

Further case of the prosecution is that SI Dharampal who had recorded the statement of Smt. Birmati @ Biro, observed that no cognizable offence had been committed. Accordingly, he recommended taking of action after post-mortem on the dead body of Krishan. SI Dharampal then initiated proceedings under Section 174 Cr.P.C. The dead body was subjected to post-mortem by a board of doctors of the General Hospital, Sonipat. In the post-mortem report, the doctors stated that the cause of death was asphyxia due to throttling. All the injuries were ante-mortem in nature and sufficient to

cause death in ordinary course of nature. From the post-mortem, the offence under Section 302 IPC was found to have been committed. Accordingly, FIR No. 339 (Ex.PF) dated 25.8.1999 under Section 302 IPC was registered at Police Station City, Sonipat.

Further case of the prosecution is that on 19.11.1999 Smt. Birmati @ Biro Devi got recorded another statement Ex.PM before Deputy Superintendent of Police wherein she stated that on 24.8.1999 at 7.30 a.m. her husband had left with accused Rajender @ Rajal on his scooter and at 11/12 o'clock she was informed by Dharambir about her husband lying in Dahiya Colony. She further stated that when she went to that place, she noticed injuries on her husband and blood oozing from his mouth. She suspected the involvement of accused Rajender @ Rajal, Jasbir and Manoj in committing the murder of her husband by giving him injuries in pursuance of a conspiracy and as a result of those injuries, her husband had died. According to her, her husband used to consume liquor but he had no grudge against the three accused. She prayed that the three accused be arrested.

It is also case of the prosecution that on 12.12.1999 accused Jasbir was produced by Satpal PW before Inspector Karan Singh. Pursuant to the disclosure statement Ex.PP made by him, accused Jasbir pointed out the place of occurrence vide memo. Ex.PP/1. On 17.12.1999, accused Manoj was arrested. He also suffered disclosure statement Ex.PN and, thereafter, pointed out the place of occurrence vide memo. Ex.PO. On 12.7.2000, accused Rajender @ Rajal was also arrested and pursuant to disclosure statement Ex.PJ, he pointed out the place of occurrence vide memo Ex.PJ/1.

After completion of the investigation and presentation of the

challan, followed by commitment of the case to the Court of Sessions, the three accused were charged for committing the offences punishable under Sections 302/34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as eighteen witnesses.

PW1 Dr. Rajiv Sethi, Medical Officer, Civil hospital, Sonipat testified that he, alongwith Dr. S.S. Bhogal, conducted post-mortem on the dead body of Krishan on 25.8.1999 and observed as follows :-

"It was a dead body of moderately built and nourished wearing check shirt, black underwear and brownish black pant. Face was congested, eyes were congested. Blood was coming out of mouth and nostrils. Rigor mortis was present in all the limbs.

Injuries:

1. A reddish bruise on right side of upper part of neck in front just lateral to mid-line size 4 cms. X 2.5 cms.
2. Multiple abraded contusions on anterior lateral aspect of left side of neck. Underlying tissues ecchymosed.
3. Multiple abrasions over right side of base of neck and top of right shoulder.
4. Reddish bluish bruise over the anterior aspect of the whole of abdomen.

Scalp, skull, chest well and ribs healthy. Brain, pleurae and both lungs healthy but congested. Heart healthy. Mucous membranes of larynx and trachea congested. Upper tracheal rings fractured. Peritoneum congested. Blood was present. Spleen showed laceration 3 cms. X 0.5 cm. All other organs were congested but healthy.

The cause of death in this case in our opinion was asphyxia due to throttling. All injuries were ante-mortem in nature and sufficient to cause death in ordinary course of life.

Duration between injuries and death within minutes and that of death and post mortem was 4 to 48 hours."

The doctor further stated that the injuries on the person of the deceased could be the result of fists and pressure by hand. In his cross-examination, he testified that remote possibility could not be ruled out of such like injuries being caused if the person going on a bicycle hits against the nylon rope straight on his neck.

PW2 Constable Inderpal proved the scale site plan Ex.PD made by him at the instance of Smt. Birmati @ Biro Devi.

PW3 HC Mohinder Singh testified that on 25.8.1999 he took special report and handed over the same to the Ilaqa Magistrate, Sonipat at 5.10 p.m.

PW4 Inspector Balwant Singh stated that he recorded FIR Ex.PF on the basis of DDR No.29 dated 24.8.1999.

PW5 Inspector Dharampal testified that he recorded statement of Smt. Birmati @ Biro Devi (Ex.PG) on 24.8.1999 and on its basis recorded DDR No.29. He also prepared rough site plan, conducted inquest proceedings and sent the dead body for post-mortem. After receipt of post-mortem report, he sent ruqa, and on the basis of which formal FIR was registered. Then he went to the spot and prepared rough site plan Ex.PH.

PW6 HC Zile Singh testified that on 12.7.2000 accused Rajender @ Rajal suffered disclosure statement Ex.PJ and pointed out the place of occurrence vide memo Ex.PJ/1.

PW7 MHC Balbir Singh produced roznamcha dated 24.8.1999 which contained DDR No. 29 dated 24.8.1999 (Ex.PK).

PW8 Inspector Naval Singh stated that he received report Ex.PL from DSP Rajpal.

PW9 Smt. Birmati @ Biro Devi reiterated the facts stated by her in her statement Ex.PG recorded by the police on 24.8.1999 and subsequently in her statement Ex.PM recorded by the police after about three month of her first statement.

PW10 Mahabir, brother of the deceased testified that on 24.8.1999 at about 7.30/8.00 a.m. when he was going for his work, he saw deceased Krishan and accused Rajender @ Rajal present on a scooter at Kalupur Octroi Post, Sonipat. When he returned home in the evening he learnt about the death of his brother. He stated that he did not know as to who had killed his brother.

PW11 SI Siri Krishan stated that on 17.12.1999 Inspector Karan Singh arrested accused Manoj, who on interrogation made disclosure statement Ex.PN and pursuant to the same, led the police party to the place of occurrence and memo. Ex.PO was prepared in that regard.

PW12 DSP Jai Parkash stated that on 25.8.1999, he investigated the case. He joined accused Rajender @ Rajal in the investigation of the case and on 28.8.1999, he interrogated accused Manoj and Jasbir.

PW13 HC Aman Singh, testified that accused Jasbir suffered disclosure statement Ex.PP on 12.12.1999 and, thereafter, pointed out the place of occurrence vide memo. Ex.PP/1.

PW14 SI Ram Kumar deposed that on 12.7.2000, he arrested accused Rajender @ Rajal, who, thereafter, suffered disclosure statement Ex.PJ and pursuant to the same, led the police party to the place of occurrence and pointed out the place vide memo. Ex.PJ/1.

PW15 Lilu Ram, father of deceased Krishan testified that about two years ago accused Rajender @ Rajal had come to his house and offered lift to his son Krishan on the scooter in order to go to a different village. His son agreed and left with accused Rajender @ Rajal. Dharambir, later on, told him that his son Krishan was lying in a street in Dahiya Colony. His daughter-in-law left the house to see her husband and brought him back in a Rickshaw.

PW16 Lachhmi Devi, mother of deceased Krishan deposed on similar lines as was done by PW15 Lilu Ram.

PW17 Dharambir deposed that on 24.8.1999, he saw Krishan, since deceased, in an injured condition lying in a plot in Dahiya Colony and, accordingly, informed his wife.

PW18 Inspector Karan Singh testified about accused Jasbir being arrested by him who thereafter, suffered disclosure statement Ex.PP, pursuant to which, he led the police party and pointed out the place of occurrence vide memo. Ex.PP/1. On 17.12.1999 accused Manoj was also arrested, who suffered disclosure statement Ex.PN and similarly pointed out the place of occurrence vide memo. Ex.PO.

When examined under Section 313 Cr.P.C., all the three accused pleaded innocence but they stated that a false case has been registered against them.

In their defence, no evidence was led by any of the three accused.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court accepted the prosecution version and, accordingly, convicted and sentenced the three accused, as mentioned above.

This Court has heard learned counsel for appellant Manoj as well as learned State counsel and with their able assistance, minutely scanned the evidence.

In order to show involvement of Manoj in the commission of the crime, the prosecution relied upon the testimonies of PW9 Birmati @ Biro Devi, PW10 Mahabir, PW15 Lilu Ram, PW16 Lachhmi Devi and PW17 Dharambir. In her testimony PW9 Birmati @ Biro Devi, wife of deceased Krishan stated that on 24.8.1999 her husband went to the field to answer the call of nature at 7.00 a.m. When he did not return for sufficiently long time, she went out to search for him and found him lying in Dahiya Colony, Sonipat. He was almost dead. She tried to enquire from him as to what had happened but he did not respond. She brought him back to the house and sought help of doctor. The doctor reached her house and declared her husband dead. She suspected the involvement of the three accused in killing her husband. Accordingly, she made statement Ex.PG to the police on 24.8.1999. She further deposed that in her supplementary statement Ex.PM recorded by the police made after three months of her first statement, she had expressed her suspicion against the three accused, who were known to her husband and were on visiting terms with him. Those three persons had taken her husband from her house on a scooter on 24.8.1999. In her cross-

examination, she was confronted with her statement Ex.PG wherein she had not named all the three accused of having taken her husband on a scooter. Rather, she had stated therein that only Rajender @ Rajal had taken her husband on a scooter. She also stated that she did not know what happened to her husband and who had killed him. She had only a suspicion against the three accused as they were on visiting terms. She denied the suggestion that her husband was not on visiting terms with the accused. She also denied that her husband did not accompany the accused or that her husband died due to excessive consumption of liquor.

PW10 Mahabir, brother of the deceased testified that on 24.8.1999, he had left his house early in the morning to attend to his work at Kalupur Octroi Post, Sonipat. He saw deceased Krishan with Rajender @ Rajal accused on a scooter at about 7.30/8.00 a.m. When he returned home in the evening, he came to know that his brother had died. He stated that he did not know who had killed his brother. In his cross-examination, he stated that though the police obtained his signatures on 24.8.1999 yet his statement was never recorded. He stated that he did not inform the police about seeing his brother Krishan going on a scooter with Rajender @ Rajal accused. He further stated that he informed the police about his brother Krishan dying a natural death. He also stated that no injury was noticed by him on the person of his deceased brother.

PW15 Lilu Ram, father of deceased Krishan testified that about two years ago, Rajender @ Rajal accused had come to his house and offered his son Krishan lift on a scooter in order to go to a different village. His son agreed and left with him. Later on, Dharambir told him that his son was lying injured in a street in Dahiya Colony. On learning about him, Krishan's wife

Smt.Birmati @ Biro Devi left the house and brought him on a rickshaw. In his cross-examination, he deposed that Rajender @ Rajal accused was a frequent visitor to his house. He further stated that Dharambir had come to his house at about 12.00 noon. He also stated that his son was a moderate drinker.

PW16 Lachhmi Devi, mother of deceased Krishan testified that about two years ago Rajender @ Rajal accused came to her house on a scooter at about 7.00 a.m. and offered his son a lift who accompanied him. At about 12.00 noon, Dharambir came and told that her son Krishan was lying in an injured condition in Dahiya Colony. On hearing this, her daughter-in-law Birmati @ Biro Devi went to Dahiya Colony and brought Krishan back in a rickshaw. During her cross-examination, she stated that the police had met her on the same day and recorded her statement. She denied the suggestion that her statement Ex.DB was recorded on 9.12.1999.

PW7 Dharambir deposed that on 24.8.1999, when he was coming from his field and reached Dahiya Colony, he saw Krishan lying in a plot in an injured condition.

In her statement Ex.PG made by Smt. Birmati @ Biro Devi on 24.8.1999 before Sub Inspector Dharampal, on the basis of which DDR No.29 dated 24.8.1999 was registered, she had stated that on that day at about 7.30 a.m. her husband Krishan had left with accused Rajender @ Rajal on his scooter and at about 11/12.00 during the day, she was informed by Dharambir that her husband was lying in an injured condition in Dahiya Colony. About three months later, i.e. on 19.11.1999, she got recorded her supplementary statement Ex.PM to the effect that her husband had been

murdered by the three accused, namely Rajender @ Rajal, Jasbir and Manoj by giving him injuries and due to those injuries, he had died. However, when she stepped into the witness-box as PW9, she tried to improve upon her version by stating that on 24.8.1999, all the three accused had taken her husband from his house on a scooter. She was successfully confronted with her statement Ex.PG where the names of all the three accused of having taken her husband on a scooter was not mentioned. Only the name of Rajender @ Rajal had been mentioned. At the same time, she also stated that she did not know as to what had happened to her husband and who had killed him. She had only a suspicion against the three accused for the reason that they were on visiting terms with her husband. PW10 Mahabir, PW15 Lilu Ram and PW16 Lachhmi Devi, brother, father and mother, respectively, of deceased Krishan in their respective testimonies testified about seeing deceased Krishan in the company of accused Rajender @ Rajal with whom he had left on his scooter in the morning of 24.8.1999. PW10 Mahabir admitted in his cross-examination that he did not inform the police about seeing his brother Krishan going on a scooter with Rajender @ Rajal accused. PW15 Lilu Ram admitted in his cross-examination that his statement was not recorded by the police. Though PW16 Lachhmi Devi during her cross-examination testified that the police had met her on 24.8.1999 and recorded her statement on the same day yet her statement Ex.DB bears the date of 9.12.1999, meaning thereby that she had got recorded her statement with the police after more than three months of the occurrence. Under these circumstances, it will not be safe to rely upon the testimonies of PW9 Birmati @ Biro, PW10 Mahabir, PW15 Lilu Ram and PW16 Lachhmi Devi. Even if their testimonies are accepted, it cannot be

said that it were the accused who had committed the murder of Krishan. At the most, it could be said that the three accused were suspected to be the murderers being frequently visitor to the house of the deceased but that will not be sufficient to hold that the murder was committed by the three accused, including appellant Manoj.

Though PW1 Dr. Rajiv Sethi had testified that when he alongwith Dr. S.S. Bhogal conducted postmortem on the dead body of Krishan, four injuries were noticed on the dead body and the cause of death was asphyxia due to throttling yet during his cross-examination, he did not rule out the possibility of such like injuries, as noticed on the dead body, being caused if a person going on a bicycle or on any other vehicle gets hit with a nylon rope straight on his neck. Therefore, it cannot be said with certainty that the cause of death was on account of asphyxia.

For the aforementioned reasons, the conviction of appellant Manoj, for the offence under Sections 302/34 IPC, as recorded by the trial Court, cannot be sustained.

The appeal is, accordingly, accepted, impugned judgment of conviction and sentence is set aside and appellant Manoj is acquitted of the charge against him.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

September 29, 2015
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