

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

CRA-S-1298-SB-2003

Date of decision : 11.02.2015

Parwar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ramandeep Sandhu, Advocate
for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab

JITENDRA CHAUHAN, J. (Oral)

This appeal is directed against the judgment of conviction and order of sentence dated 08.07.2003, passed by the Additional Sessions Judge (Adhoc), Jalandhar, vide which the accused/appellant was convicted for the offence punishable under Section 201 of the Indian Penal Code (hereinafter called as 'IPC') and sentenced them to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.4000/- or in default of payment thereof, to further undergo RI for a period of one year. The accused/appellant was acquitted of the charge framed against him under Section 302 IPC.

The brief facts as set out in para Nos.1 to 4 of the judgment of trial Court, is being reproduced as under:-

“On night intervening 18/19.03.2002 accused Parwar Singh and Bhagwant Singh are alleged to have committed the murder intentionally by causing the death of Jaswant Singh @ Lala and committed offence under Section 302 IPC

for which he was charge-sheeted. The propounder of this case is complainant Jagiri PW-6 who is none else but father of deceased. He suffered a statement Ex.PH/A before Dharampal SI on the basis of which this case was registered under Section 302, 201 read with Section 34 IPC. As per version sealed in the above statement Ex.PH/A said Jagiri is resident of village Maheru and his a labourer (paledar). He has got two sons and two daughters, out of them two daughters and one elder son Kulwant Singh were married and youngest was Jaswant @ Lala who was still unmarried. He was employee with accused Parvar Singh in his tempo (vehicle) Tata 407 for about 7-8 months prior to this occurrence. About 2 months prior to the occurrence the said vehicle had met with an accident at Shanker road Nakodar and his son Jaswant Singh had received injuries on his leg. The matter entered into compromise with the trailer owner. Tyre of his tata vehicle was stolen at tempo union Nakodar and Parvar Singh accused suspected the son of the complainant namely deceased Jaswant and he threatened his son that he will teach his son a lesson of steeling the tyre. The son of the complainant out of fear of the accused left the service as driver and went to his maternal uncle Hans Raj son of Chanan, Balmik, r/o Jagrawan. Accused Parvar Singh and Gurnam Singh sons of Chain Singh had threatened the complainant that in case son of the complainant does not turn up then they will teach in a lesson. Out of fear of the accused the complainant had brought his son 15 days prior to this occurrence from Jagrawan. A talk of compromise has been initiated between the accused Gurnam Singh and Parvar Singh and complainant but the accused were not responding and were stating that they will settled the matter privately. One day before the report i.e. 18.03.2003 at about 10.00/11.00 am., the complainant had left his son deceased Jaswant Singh in his

house and went for labour as Paledar to Nakodar. When he came back in the evening he found his son Jaswant not available and he kept him awaited till late night but he did not turn up. On the next morning at about 9.00 am on 19.03.2002 Joginder Singh son of Karam Singh, Balmiki, r/o Maheru came to his house and told that one young person is living dead near his electric motor and he appeared to be Jaswant deceased son of the complainant. The complainant accompanied him alongwith Kulwant his other son and went to his tube-well and saw his son Jaswant @ Lala near the tube-well lying dead. He had received head injury and deep wound were bleeding. The complainant suspected that his son Jaswant has been murdered by accused Parvar Singh and Gurnam Singh sons of Chain Singh residents of Maheru and their relative accused Bhagwant absconding accused of village Cheema, after committing the murder the dead body has been scattered in order to destroy the evidence and so dead body has been thrown for this purpose. On this the complainant deputed his other son Kulwant Singh to guard the dead body and himself was going to lodged report while he came across SI Dharampal who recorded the above statement. During investigation SI Dharampal PW-7 prepared inquest report Ex.PB and he prepared police request for post-mortem examination Ex.PA/1 and he inspect the spot and prepared rough site plan Ex.PK. He recovered the blood stained earth from the spot vide memo Ex.PF. He also recovered blood stained earth from the passage and both the parcels were sealed with seal DP. He also recovered one pair of chappal which was converted into parcel and taken into possession vide recovery memo Ex.PC which were attested by Sadhu Singh and Buta Singh. During investigation SI Dharampal PW-7 further recovered two brick bites which were blood stained from the

passage which were taken into possession vide memo Ex.PE and HC Amar Singh has produced before him the clothes of the deceased after post-mortem examination which were taken into possession vide memo Ex.PH which included parcel Ex.P3, clothes Ex.P4 and chappal Ex.P5. The brick bite is Ex.P1 and blood stained earth is Ex.P2. He deposited the aforesaid articles with MHC on the same day and accused were challaned. As per final report accused Parvar Singh has been challaned whereas accused Gurnam Singh and Bhagwant Singh have been shown in red ink as absconding accused.”

On commitment, the accused was charge sheeted under Sections 302, 201 and 34 IPC to which the accused/appellant pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 Dr. B. S. Bhogal; PW-2 Buta Singh; PW-3 HC Amar Singh; PW-4 Constable Sarabjit Singh; PW-5 Joginder Singh; PW-6 Jagiri Lal; PW-7 SI Dharampal; PW-8 ASI Sadhu Singh and PW-9 MHC Kirpal Singh.

PW-1, Dr. B. S. Bhogal, who was posted as Medical Officer at Civil Hospital, Nakodar conducted the post-mortem examination on the dead body of the deceased Jaswant @ Lala and submitted his report Ex.PA;

PW-2, Boota Singh, identified the dead body of the deceased and is also a attesting witness of the inquest report Ex.PB and recovery memos;

PW-3, HC Amar Singh stated that the dead body was handed over to him and Balwinder Singh carried the dead body to civil hospital where the post mortem was conducted. The clothes of the deceased was handed over to this witness and he handed over the same to Dharam Singh.

PW-4 Constable Sarabjit Singh, deposed that on 26.03.2002 MHC Kirpal Singh had handed over one parcel duly sealed with seal 'DP' and one parcel of blood stained earth and one brick which was also blood stained in the parcel, which were deposited by him on the same day.

PW-5 Joginder Singh deposed that how and in what manner the dead body was found near the motor.

PW-6 Jagiri Lal, is the father of the deceased and deposed regarding the whole occurrence.

PW-7 SI Dharampal, testified the whole investigation carried out by him and proved on record the recovery memos.

PW-8 ASI Sadhu Singh, also proved the recovery memos and narrated about the occurrence.

PW-9 MHC Kirpal Singh, had sent all the recovered articles to the FSL and proved on record the receipt/acknowledgment of the said articles.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. He, however, did not lead any evidence in their defence.

After hearing the learned counsel for the parties and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Aggrieved against the judgment of conviction and order of sentence passed by the trial Court, the instant appeal was filed by the accused/appellant, which was admitted on 21.07.2003.

It is contended on behalf of the appellant that initially the FIR was registered under Sections 302, 201 and 34 IPC. It is submitted that the accused/appellant was acquitted of the charge under Section 302 IPC and convicted under Section 201 IPC, on the basis of same evidence. Once the charge against the accused/appellant under the substantive offence i.e. Section 302 IPC was not proved, his conviction under Section 201 IPC is not sustainable. He refers to the testimony of PW-1, Dr. B. S. Bhogal, wherein, he has specifically stated that the time elapsed between injury and death was immediate and between death and post mortem was more than 48 hours, and states that there is no direct evidence on record to connect the appellant/accused with the commission of crime. The learned counsel further refers to the testimony of PW-5, Joginder Singh, the star witness of the prosecution, who had seen the dead body for the first time near the motor, and states that the prosecution has miserably failed to connect the appellant with the crime.

It is further submitted that the dead body was lying near the motor in the fields, the ownership of the land was not proved. PW-2, Boota Singh, who had last seen the accused/appellant near the brick kiln has resiled from his statement and was declared hostile. As per statement of PW-2, Boota Singh, he had only seen the accused/appellant with other co-accused near the brick kiln but not with the deceased. The testimony of this witness is totally untrustworthy and unreliable and even in the FIR, the version of PW-2 Boota Singh and PW-6 Jagiri having seen accused/appellant taking the deceased Lala @ Jaswant is not mentioned, so

it is an after thought version different from the FIR which is an improvement made by PW-6 Jagiri, father of the deceased and this improved version about accused/appellant taking the deceased and keeping him during whole night is an after thought.

The accused was convicted for the offence punishable under Section 201 IPC, that is, causing disappearance of evidence and as per the prosecution story, the accused tried to destroy the evidence by throwing the dead body near the place of recovery but there is nothing on record to suggest that accused/appellant tried to destroy the evidence. There was no dragging mark at the place of occurrence.

In support of his contentions, the learned counsel for the appellant cites the judgment **Duvvur Dasratharammareddy** Vs. **State of Andhra Pradesh**, 1971 Supreme Court Cases (Cri.) 472, **State of UP** Vs. **Kapil Deo**, 1992(1) RCR (Criminal) 251, **Ram Saran Mahto** Vs. **State of Bihar**, 1999(4) RCR (Criminal) 71 and **Rajiv Kumar** Vs. **State of Haryana**, 1997(3) RCR (Criminal) 53.

On the other hand, the learned State counsel submits that the prosecution has fully proved its case against the accused/appellant and has supported the judgment of the trial Court. It is contended that the father of the deceased has narrated the sequence of events that his son being a driver was in the employment of the present appellant/accused. About one month prior to his death, an accident had taken place. He remained admitted in hospital and in his absence, the vehicle was stolen and accused leveled allegations of theft upon the deceased. The father of the deceased tried to

patch up the matter but the accused/appellants were not willing to compromise and the accused/appellant along with Gurnam Singh and Bhagwant Singh, started threatening that either he should bring his son otherwise they will proceed me through police. The learned State counsel has contended that the accused/appellant has nurtured a grudge against the deceased and prior to the incident, the accused/appellant along with Gurnam and Bhagwant took the deceased to some unknown place and kept him during whole night. There was enmity against the deceased. The scientific post mortem is not totally authentic. The motive behind the murder is there and a young man has been murdered. The learned State counsel has supported the judgment of the trial Court.

This Court has scrutinized the lower Court record carefully with the able assistance of the learned counsel for the parties.

In the present case, the accused/appellant was charged for offence punishable under Section 302 IPC for which he was acquitted. The Appellant has been convicted for offence under Section 201 IPC, that is, causing disappearance of evidence of offence, or giving false information to screen offender. The material witness of the prosecution i.e. PW-2 Boota Singh, did not support the prosecution version and turned hostile. PW-2, Boota Singh, has categorically deposed that he did not see the accused Parwar Singh near the brick kiln on 18.03.2002. There is no eye witness to the occurrence.

Section 201 IPC reads as under:-

201. Causing disappearance of evidence of offence, or giving false information to screen offender —

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

The following are the ingredients of the offence under Section 201, Indian Penal Code:-

- (1) that an offence has been committed;
- (2) that the accused, knew or had reason to believe; that such an offence has been committed;

(3) that the accused causes evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false and

(4) that he caused the evidence to disappear with intent to screen the offender from legal punishment.

In this case, the dead body was recovered from the fields near the tubewell motor. The ownership of land was not proved by the prosecution. The place of recovery is visible and accessible to the public. It was not lying hidden. Even, there was no dragging mark at the place of occurrence which would show that the dead body was taken away from the spot. The prosecution has failed in establishing the fact that the accused had caused disappearance of evidence of commission of that offence or he knew about the commission of crime or he had the reasons to believe the commission of that offence. The mere fact that the deceased allegedly died an unnatural death would not be sufficient to prove the guilt of the accused under section 201 IPC, unless the ingredients of Section 201 IPC are proved.

There is no evidence on record fastening the present appellant/accused with the commission of crime. This aspect of the case appears to have escaped complete attention of learned trial Court. Thus, it becomes evident that the conviction of the appellant/accused, under Section 201 IPC, was not supported by the evidence on record.

For the reasons recorded above, it is held that the prosecution

has failed to prove its case against the accused/appellant beyond a reasonable shadow of doubt. The benefit of doubt is extended to the appellant.

Accordingly, the present appeal is accepted, the judgment of conviction, and order of sentence passed upon the accused/appellant are set aside. He stands acquitted of the charges framed against him by giving him the benefit of doubt. He be set at liberty forthwith, if not required in any other case. The appeal stands allowed.

(JITENDRA CHAUHAN)
JUDGE

11.02.2015

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