

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

Date of Decision: 11.01.2016.

CRA-D-167-DB-2010

Satbir		Appellant.
	VERSUS	
State of Haryana		Respondent.

WITH

CRA-D-168-DB-2010

Parmanand		Appellant.
	VERSUS	
State of Haryana		Respondent.

AND

CRA-D-228-DB-2010

Ramesh		Appellant.
	VERSUS	
State of Haryana		Respondent.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE SNEH PRASHAR**

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

Present: Mr. Shilak Ram Hooda, Advocate and
Ms. Sharmila Sharma, Advocate for the appellants.

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellants-accused Satbir, Parmanand and Ramesh vide judgment of conviction dated 06.01.2010 and order of sentence dated 08.01.2010 were held guilty, convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- each for commission of offence under Section 302 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and in default of payment fine to further undergo rigorous imprisonment for a period of one year each. It was ordered that the imprisonment already undergone by them during trial shall be set off.

Precisely, the story presented by the prosecution in its final report under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") are recapitulated hereunder:-

On 06.01.2008 at about 9:20 p.m., a telephonic information was received from Police Control Room, Jhajjar that an unknown person, who had scaled over the wall, was lying dead in the house of Ramesh son of Ram Karan, owner of Grind Mill (Chakkiwala). On receipt of information, Assistant Sub Inspector Satbir Singh alongwith official companions reached the house of Ramesh by means of official jeep bearing registration No.HR-63A-2333 driven by EHC No.319 Baljeet. The dead body of a person was lying on a cot in the house. On verification, the name of the deceased was known to be Inder Parkash son of Rattan Lal Sharma, Caste Brahmin, resident of village Utloda. An information regarding death of Inder Parkash was given to his father and after some time Rattan Lal alongwith some other persons reached village Chhabili.

Rattan Lal then gave a written complaint to ASI Satbir Singh, the contents of which indicated commission of murder. The complaint was sent to the police station on the basis of which a formal First Information Report was recorded and a case under Section 302 read with Section 34 I.P.C. was registered.

Complainant Rattan Lal stated that his son had left home at about 8:00/8:15 p.m. of 06.01.2008 telling him that he was going to Ramesh son of Ram Karan, resident of village Chhabili to bring money which he (Ramesh) had borrowed from him. Inder Parkash was to return home the same night but he did not come. At about 11:00 p.m., he (complainant) received information from the police that the dead body of Inder Parkash was lying on a cot in the house of Ramesh. On receipt of information, he alongwith Ramphal son of Rameshwar and his nephew Jai Parkash son of Munshi Ram had come to the house of Ramesh and identified the dead body of his son Inder Parkash who had been murdered by Ramesh, his family members and friends because earlier also they had extended threats to kill him when he demanded money from them.

All the three accused were charge-sheeted for the commission of offence under Section 302 read with Section 34 I.P.C., to which they pleaded not guilty and claimed trial.

As many as 16 witnesses were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in their statement under Section 313 Cr.P.C., the accused denied all allegations of the prosecution

and pleaded innocence and false implication. They further pleaded that they have no connection with the alleged crime and were not present at the time of alleged occurrence. Appellant Ramesh also stated that Inder Parkash had fallen from a wall and sustained injuries and this fact was narrated to the police by number of persons

Considering the arguments advanced by the learned Public Prosecutor for the State and counsel representing the accused, learned trial Court held the appellants guilty and convicted and sentenced them as indicated above.

Feeling aggrieved, the convicts (appellants) preferred the instant appeal.

Heard the submissions made by Mr. Shilak Ram Hooda and Ms. Sharmila Sharma, learned counsels representing the appellants and Mrs. Shubhra Singh, Additional Advocate General, Haryana.

At the very outset, learned counsel for the appellants argued that except for the fact that the dead body of Inder Parkash son of complainant Rattan Lal was found lying in the house of appellant Ramesh, no substantive and direct evidence could be produced by the prosecution to prove the occurrence during which Inder Parkash died least any evidence indicating commission of murder by the appellants could be produced. It was deposed by SI Satbir Singh (PW15) that on 06.01.2008 when he was posted as ASI/Investigation Officer at Police Station Jhajjar, he had received information through Control Room that a person, who fell while scaling a wall, was lying in the house of Ramesh. Learned counsel

contended that the information to the police itself disclosed the nature of occurrence which led to the death of Inder Parkash. The appellants had no reason to murder Inder Parkash. The motive assigned to the appellants was vague and could not be proved by the prosecution. No documentary or ocular evidence could be led to prove that appellant Ramesh owed money to the deceased and for demanding the same he had come to the house of Ramesh or that earlier when the deceased demanded money, appellant Ramesh had threatened to kill him. The solitary ocular statement of complainant Rattan Lal (PW12), father of deceased, was not sufficient to prove the alleged motive.

Learned counsel emphatically contended that it was not the case of the prosecution that either of the appellants was present when the police came and found the dead body of Inder Parkash lying on a cot in the house of Ramesh. In any case, appellants Satbir and Parmanand had no connection with the house and there is no evidence to assume their presence in the house when Inder Parkash died. They were roped in commission of crime on mere whimsical grounds.

Indeed, the prosecution evidence lacks direct evidence required under law for proving commission of crime of murder by the appellants. The case rests solely on circumstantial evidence. It is a settled proposition of law that success of the prosecution on the basis of circumstantial evidence will depend on the availability of a complete chain of events so as to leave no doubt for the conclusion that the act must have been done by the accused persons. However, while it is true that there should be no missing

links, in the chain of events so far as the prosecution is concerned, it is not that every one of the links must appear on the surface of the evidence. Some of these links may only be inferred from the proven facts as was observed by Hon'ble Supreme Court in *Pawan Kumar vs. State of Haryana, (1998) 3 SCC 309.*

Admittedly, as was deposed by PW15 Sub Inspector Satbir Singh, on 06.01.2008 he received an information through Control Room that the dead body of Inder Parkash was lying in the house of Ramesh son of Ram Karan (Chakkiwala). It was also part of the information that the deceased had fallen while scaling a wall. The name of the person who gave the information could not be known but the fact is that on receipt of information when PW15 Sub Inspector Satbir Singh alongwith his official companions reached the house of appellant Ramesh, he found there the dead body of Inder Parkash lying on a cot in the compound of the house. It has come in the deposition of PW15 that no one was present in the house when he reached there. If at all, Inder Parkash had fallen while scaling the wall and some person had witnessed the occurrence, there was no necessity for that person to run away leaving the dead body alone in the house.

Absence of the person, who gave that information as well as absence of Ramesh from the house are two major grounds for disbelieving the cause of death as stated in the information. The argument of learned counsel for the appellants that PW8 Dr. Pardeep Kumar admitted in his cross-examination that injuries found on the person of deceased were possible by fall from a considerable height on a hard surface and that

supports the information received by PW15 Sub Inspector Satbir Singh that the deceased had died as a result of injuries suffered by him when he fell while scaling a wall, is of no merit. PW8 Dr. Pardeep Kumar conducted postmortem examination on the dead body of deceased Inder Parkash on 07.01.2007. The injuries found on body were described by him as under:-

- “1. 19x3 c.m. reddish blue contusion present obliquely on lower chest extending just below the nipple on right side and left upper quadrant abdomen on left side. On dissection sub cutaneous tissue show haemorrhage.*
- 2. 9x3 c.m. reddish blue contusion present on abdomen left lower quadrant. On dissection sub cutaneous haemorrhage present.*
- 3. 4x3 c.m. abrasion with reddish blue contusion present on lower back left side. On dissection sub cutaneous tissue show haemorrhage.*
- 4. 3x1.6 c.m. abrasion on left knee.*
- 5. 3x1.2 c.m. abrasion on anterior aspect of upper half of left leg.*

Stating about condition of various organs the doctor mentioned as under:-

“Spleen shows a laceration measuring 4 x .8 c.m. on anterior aspect, margins show haemorrhage, clotted blood was present on the surface of the spleen. Bladder was empty.”

The cause of death of the deceased at the time of postmortem

was withheld stating that it will be given after receipt of Forensic Science Laboratory report on examination of viscera.

During his deposition in the Court, PW8 Dr. Pardeep Kumar perused the Forensic Science Laboratory report Ex.P15 and gave his opinion regarding cause of death as under:-

“At this stage FSL report Ex.P15 was perused and cause of death in this case in my opinion is due to haemorrhage and shock, as a result of injuries vital organs already described above. The injuries were anti mortem in nature and were sufficient were cause of death in normal course of nature.”

In the site plan Ex.P3 prepared by the Investigation Officer of the house of appellant Ramesh, the place where the dead body was found to be lying was marked by letter 'A'. Importantly, the height of the southern wall at a distance of 1.2 meters from the dead body was mentioned as 2.5 meters. There is no mention of any hard object near the wall, a fall on which could have caused injuries found on the person of the deceased. The phrase “considerable height” and “hard surface” used by the doctor were not got explained and clarified from him. Neither it was stated by the doctor nor it was put to him that the deceased during fall from a wall 2.5 meters on a flat surface could have suffered the injuries on vital organs including injury to the spleen as was noticed by him in the postmortem examination report.

Importantly, in his statement recorded under Section 313 Cr.P.C., appellant Ramesh stated that Inder Parkash had fallen from a wall and sustained injuries and this fact was narrated to the police by number of persons. He added that he was not present in his house on that day. The

statement of appellant Ramesh amounts to almost admission of presence of Inder Parkash in his house on the relevant date and time. In case he was not present in the house, who told him that the deceased had come to his house or had fallen while scaling over the wall, was not disclosed by him. He also did not name the persons who told the police that the deceased had fallen from the wall. There is also no explanation how the said facts came to his knowledge. He neither himself stepped into the witness box in defence to prove the plea taken by him nor examined any other witness who could prove his defence version.

Complainant Rattan Lal (PW12) deposed that on 06.01.2008 at about 7:00/7:30 p.m., his son Inder Parkash had gone to village Chhabili at the house of Ramesh for bringing money from him. He was told by his son Inder Parkash that he had received telephone call from Ramesh pursuant to which he was going to village Chhabili. PW12 further stated that after having dinner he had gone to sleep and at about 11:00 p.m., police reached his house and informed him that his son had been killed. He alongwith his nephews Jai Parkash and Ramphal came to village Chhabili and saw the dead body of his son Inder Parkash lying in the courtyard of the house of appellant Ramesh.

The statement of complainant Rattan Lal (PW12) was corroborated by PW9 Smt. Santosh widow of deceased Inder Parkash. She too stated that on 06.01.2008 at around 7:00/7:30 p.m., her husband Inder Parkash had gone to the house of appellant Ramesh for taking money as Ramesh had called him for that purpose.

As noticed above, the statement of appellant Ramesh recorded

under Section 313 Cr.P.C. affirmed the above factum. He himself admitted presence of deceased Inder Parkash in his house on the day of occurrence i.e. 06.01.2008 and the cumulative effect of the said facts completes the link to establish that Inder Parkash started from his house and reached the house of appellant Ramesh. There was no occasion for Inder Parkash to scale over the wall to enter the house of Ramesh. Appellant Ramesh did not assign any reason for which Inder Parkash could have scaled over the wall to trespass into his house. There is also no explanation how the dead body came to be placed on a cot.

Section 106 of the Indian Evidence Act, 1872 reads as under:-

“Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

Since appellant Ramesh wanted the Court to believe certain facts; (i) that deceased Inder Parkash had fallen from the wall in his house and died due to injuries suffered by him and (ii) that at the time of occurrence he was not in the house; therefore it was for him to prove the said facts which were exclusively within his knowledge. When he admitted that Inder Parkash had come to his house, only he could explain how he, who was alive turned into a dead body.

In the light of facts discussed above, the argument of learned

counsel for the appellants that there is an unexplained delay in lodging of the First Information Report is of no consequence. Indeed, as pointed out by learned counsel for the appellants, it has come in evidence that the information about the dead body in the house of appellant Ramesh was given to the police at 9:20 p.m. and that as deposed by PW12 complainant Rattan Lal he was informed at his house by a police official at 11:00 p.m. that his son had been killed, but the First Information Report was registered at 9:05 a.m. and the special report pertaining to the same had reached the Magistrate at 11:35 a.m. on 07.01.2008. The sequence by no stretch of imagination indicates that there was delay in lodging of the First Information Report. On receipt of information regarding murder of his son, PW12 complainant Rattan Lal alongwith his nephew came to the house of Ramesh. After verifying the facts, he gave complaint Ex.P1 to the police at 12:00/1:00 a.m. (midnight). The complaint was sent to the police station and if at all the First Information Report was recorded at 9:05 a.m., the delay, if any, cannot be attributed to the complainant.

Otherwise also, the delay in lodging of the First Information Report is not always fatal to the case of the prosecution as observed by Hon'ble Supreme Court in **Bhajan Singh @ Harbhajan Singh & ors. vs. State of Haryana, (2011) 7 Supreme Court Reports.**

The instant case has certain peculiar facts. Appellant Ramesh admitted that Inder Parkash had come to his house. He could produce no evidence to prove that he was not in the house at that time. Since Inder Parkash died in his house and he had no explanation about his death, the

delay, if any, in lodging of the First Information Report could cause no prejudice to him. In any case, there was no delay worth taking note of.

The motive of the appellants in committing the murder of Inder Parkash is stated to be that he had lent money to appellant Ramesh which he was demanding and had come to the house of appellant Ramesh on his calling to take the same. PW9 Santosh wife of deceased Inder Parkash stated that her husband had lent money to Ramesh on various occasions in the tune of Rs.5,000/-, Rs.10,000/- and Rs.20,000/-. Ramesh used to return the money also. She further stated that Rs.50,000/- were due to be repaid by appellant Ramesh. PW12 complainant Rattan Lal also stated that before leaving the house his son Inder Parkash had told him that he had received a telephone call from appellant Ramesh and was going to his house to bring money. There may not be any documentary evidence by the prosecution to prove the said motive but there is also no evidence to indicate that PW9 Smt. Santosh and PW12 Rattan Lal had any reason for being inimical towards appellant Ramesh for implicating him falsely in the present case. A near relative of the deceased is the last person to implicate any person falsely and let the real culprit go scotfree.

Having all said and done, the fact is that the entire evidence of the prosecution tilts to prove that appellant Ramesh murdered Inder Parkash who had come to his house to demand the money he owed to him. What to say of substantive and reliable evidence, there is not a pinch of evidence to prove any allegation against appellant Satbir and Parmanand. The only evidence of the prosecution to link appellants Satbir and Parmanand to the

murder of deceased Inder Parkash was the statement of Hawa Singh son of Harphool said to be a friend of deceased Inder Parkash. Hawa Singh stepped into the witness box as PW7. Though he admitted that Inder Parkash was his friend but he outrightly denied that appellant Ramesh had borrowed Rs.50,000/- from Inder Parkash and that on 06.01.2008 he and Inder Parkash had gone to the house of appellant Ramesh to bring the money. The story of the prosecution was that when Inder Parkash went to the house of appellant Ramesh, Hawa Singh had gone to village Khakhana for some personal work and in the night at about 9:00 p.m. when he came back to the house of appellant Ramesh, he saw appellant Ramesh, his younger brother Satbir and his cousin brother Parmanand giving beating to deceased Inder Parkash with *Dandas*. Seeing him, appellant gave an alarm to teach him also a lesson on which he fled away and hid himself in the fields.

PW7 Hawa Singh denied having witnessed any such occurrence as was allegedly presented in his statement Ex.P13 recorded by the police under Section 161 Cr.P.C. He did not utter a word incriminating against the appellant.

Dispensed with the statement of PW7 Hawa Singh, the prosecution was left with no evidence worth in its name to link appellants Satbir and Parmanand with the crime. As per the site-plan of the spot of occurrence Ex.P3 prepared by the Investigation Officer the house was of appellant Ramesh in which the dead body was found lying on a cot. It is not the case of the prosecution that appellant Satbir and Parmanand were also

residents of that house. As is proved from the evidence, Satbir and Parmanand were not present in the house of Ramesh when the police reached and found the dead body lying in the house. There is absolutely no evidence to prove their presence in the house of Ramesh when deceased Inder Parkash entered his house or was killed. Mere recovery of a *Danda* from each of the said appellants from their respective houses by no stretch of imagination is sufficient to connect them with the crime. They were assigned no motive and there is no circumstance proved by the prosecution to connect them with the murder of Inder Parkash. The charges against them could not be proved beyond all shadows of reasonable doubt.

Accordingly, the appeals filed by appellants Satbir and Parmanad are allowed and they are acquitted whereas the appeal filed by appellant Ramesh is dismissed and the judgment of conviction and the order of sentence recorded by the trial Court against him are upheld.

(HEMANT GUPTA)
JUDGE

(SNEH PRASHAR)
JUDGE

11.01.2016
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