

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

CRA-D No.340-DB of 2010

Date of Decision: 08.01.2016.

Rohtash @ Bablu @ Langur and othersAppellants.

VERSUS

State of HaryanaRespondent.

**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: Ms. Aditi Girdhar, Amicus Curiae for the appellants.

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellants Rohtash @ Bablu @ Langur, Mukesh @ Ghasar, Parmod @ Bhuru @ Bhuria and Ravi Kumar vide judgment of conviction dated 11.12.2009 and order on quantum of sentence dated 18.12.2009 were held guilty and convicted for the commission of offence under Section 396 read with Section 120B of the Indian Penal Code (for short, "I.P.C."), under Section 201 I.P.C. read with Section 120B I.P.C. and under Section 412 I.P.C. and were sentenced as under:-

“to undergo Rigorous Imprisonment for life and to pay a fine of Rs.5,000/- each under Section 396 read with Section 120B I.P.C. and in default of payment of fine to further undergo Rigorous Imprisonment for a period of two years; Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1,000/- under Section 201 read with Section 120B I.P.C. and in default of payment of fine to further undergo Rigorous Imprisonment for a period of one year; Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.2,000/- under Section 412 I.P.C. and in default of payment of fine to further undergo Rigorous Imprisonment for a period of 1-1/2 years.”

It was ordered that the sentence of imprisonment awarded shall run concurrently.

The story of the prosecution was as under:-

On 07.11.2006 at about 3:15 a.m. Abhey Jain son of Himmat Jain, resident of House No.650, Sector-5, Gurgaon lodged a report with the police that Sachin Jain son of his friend, who was serving in Papa John, Cyber Green Building, DLF, Gurgaon and had gone to attend his duty on 29.10.2006, had not returned home in the evening. On enquiry from the company, they had come to know that Sachin Jain alongwith his friend Dinesh had come to Shankar Chowk on foot. As from Shankar Chowk Sachin Jain was to go towards Gurgaon and Dinesh was to move towards Delhi, they separated. A report regarding missing of Sachin Jain was lodged

with the police on 30.10.2006.

The complainant further mentioned that on that night i.e. night intervening 06/07.11.2006 he had received information that near Leisure Valley Park one dead body was lying in the gutter. He alongwith Sanjay Jain reached the spot and saw the dead body and was able to identify that it was of Sachin Jain. Some unknown persons had kidnapped Sachin Jain and murdered him.

Based on the above First Information Report, a case was registered and investigation commenced. The dead body was taken out from the gutter. Assistant Sub Inspector Suresh Kumar prepared an inquest report regarding the dead body. It was got photographed and was sent for postmortem examination.

Special Staff of Gurgaon had arrested appellants Rohtash @ Bablu @ Langur, Mukesh @ Ghasar, Parmod @ Bhuru @ Bhuria and Ravi Kumar in a case bearing First Information Report No.1133, dated 04.11.2006 under Section 302/201 I.P.C., Police Station D.L.F., Gurgaon. During interrogation in that case, the appellants had made separate disclosure statements and disclosed the crime committed by each of them which included the occurrence of the present case. They were arrested on 11.11.2006 and interrogated. Again each of them made disclosure statement regarding commission of the occurrence during which Sachin Jain was murdered in conspiracy with each other and also demarcated the place where the dead body was thrown in the gutter. In pursuance of their disclosure statements they got recovered a silver ring, wrist watch, mobile

phone, purse, identity card, cheque book of P.N.B. etc. belonging to deceased Sachin Jain. On completion of investigation and other necessary formalities, the appellants were challenged and sent to the Court for trial.

All the four accused were charge-sheeted for the commission of offence under Section 396 I.P.C. and in the alternative under Section 302 I.P.C., under Section 201 I.P.C. and Section 412, I.P.C., to which they pleaded not guilty and claimed trial.

As many as 23 witnesses were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in their statement under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the accused denied all allegations of the prosecution and pleaded innocence and false implication. They further pleaded that neither they made any disclosure statement nor got effected any recovery and that no such occurrence was committed by them.

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.

The submissions made by Ms. Aditi Girdhar, learned Amicus Curiae on behalf of the appellants and Mrs. Shubhra Singh, Additional Advocate General, Haryana have been heard and record perused.

A perusal of the evidence led by the prosecution reveals that Sachin Jain (deceased) was employed in Pizza Papa John Company, D.L.F. Phase-III, Gurgaon as per his Identity Card Ex.P6 proved by PW23 Ravinder Singh Chauhan. On 29.10.2006, Sachin Jain had gone to attend his duty but he did not return home in the evening. On enquiry from the company, Dinesh Kumar PW8, friend of Sachin Jain, told that on 29.10.2006 he and Sachin Jain had left the company together and had come on foot to Shankar Chowk at 10:20 p.m. He then left for Delhi leaving Sachin Jain at Shankar Chowk as he was to go to Gurgaon. A report regarding missing of Sachin Jain was lodged with the police on 30.10.2006. On the night intervening 06/07.11.2006 dead body of Sachin Jain was recovered from the gutter near Leisure Valley Park. His dead body was identified by complainant Abhey Jain (PW1) on whose statement Ex.PA the First Information Report was registered. The facts indicated that Sachin Jain was kidnapped and murdered in the night on 29.10.2006.

There is no direct evidence or eyewitness account of the occurrence during which Sachin Jain was kidnapped or was murdered. However, it transpires from the deposition of the prosecution witnesses that certain peculiar circumstances, on which the prosecution relies upon, clearly indicate commission of crime by the appellants.

Before scrutinizing the said circumstances, it will be relevant to refer to **Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116** wherein “5” following golden principles enunciated by Hon'ble Supreme Court governing proof of a criminal charge by circumstantial

evidence were laid down in Para No.153 of the judgment:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra (1973)2 SCC 793 where the following observations were made: certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Similarly, in Karihai Mishra alias Kanhaiya Misar v. State of

Bihar, JT 2001 (3) Supreme Court 191 it was laid down as under:-

“It is a well-established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that the same is wholly inconsistent with innocence of the accused and is consistent only with his guilt. The incriminating circumstances for being used against the accused must be such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In a case of circumstantial evidence the whole endeavor and effort of the court should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused. If the circumstances proved against the accused in a case are consistent either with the innocence of the accused or with his guilt, he is entitled to the benefit of doubt.

*Reference in this connection may be made to a constitution bench judgment of this Court in the case of **M.G. Agarwal v. State of Maharashtra** and recent decision of this Court in the cases of **Ronny v. State of Maharashtra** and **Joseph v. State of Kerala.**”*

Reverting to the instant case, as already observed above, on the night of 29.10.2006 deceased Sachin Jain had gone missing after he was left at Shankar Chowk by his friend PW8 Dinesh Kumar who had gone towards Delhi whereas Sachin Jain was to go to Gurgaon. During the night intervening 06/07.11.2006 complainant PW1 Abhey Jain received information that a dead body was lying in a gutter near the Leisure Valley Park, Sector-29, Gurgaon. He alongwith Sanjay Jain immediately rushed to that place and saw a dead body inside the gutter which he identified was of Sachin Jain. Immediately thereafter at about 3:15 a.m. on 07.11.2006 he

informed the police about presence of dead body in the gutter and got his statement Ex.PA recorded, on the basis of which the First Information Report was registered. Accompanied by complainant Abhey Jain and his companion Sanjay Jain, A.S.I. Suresh Kumar, the Investigation Officer went to the spot, got the dead body taken out from the gutter and took the same into possession vide memo Ex.PB, on which PW1 Abhey Jain admitted his own signatures and the signatures of Sunil Jain, father of the deceased. On personal search of the dead body revealed that his belongings such as wrist watch, mobile, silver ring, purse, identity card, cheque book of Punjab National Bank which he used to keep with him, were missing. The inquest report prepared by the police is Ex.PC.

It was proved by PW17 Inspector Sanjiv Kumar that on 06.11.2006 when he was posted as Incharge, Special Staff, Gurgaon as Sub Inspector and was investigating case bearing First Information Report No.1133 of 2006 under Section 302/ 201 I.P.C. of Police Station D.L.F. Gurgaon, appellant Ravi Kumar on interrogation made disclosure statement Ex.PAA regarding 21 occurrences including the occurrence of the present case. He stated that on 29.10.2006 he alongwith his co-accused had given lift to a person from IFFCO Chowk and after committing his murder had thrown the dead body in a gutter near Leisure Valley Park. He added that after committing murder they looted the belongings of the deceased.

PW17 Inspector Sanjiv Kumar further proved the disclosure statement Ex.PBB given by Lalit Kumar who disclosed about 14 occurrences committed by him including the occurrence of this case; of

appellant Mukesh Ex.PCC who stated having committed 21 occurrences including the occurrence of this case; of appellant Rohtash Ex.PDD who stated about 24 occurrences including the occurrence of this case; and of appellant Parmod Ex.PZ wherein he disclosed commission of 26 occurrences including the present one. Appellant Parmod also disclosed that mobile Nokia-2300 looted from the person, who was given lift from IFFCO Chowk, came to his share and he handed over the same to Budh Ram alias Budhu, resident of Bhora Kalan and Rs.200/- were spent by him. Identifying the appellants in the Court, PW17 Inspector Sanjiv Kumar added that Jeep bearing registration No.HR-61-1154 used in commission of crime was recovered from appellant Rohtash and was taken in possession vide memo Ex.PEE.

It is important to note that in Para No.15 of the judgment by learned trial Court it was mentioned that Lalit (accused) was found to be a juvenile and was sent for trial by Juvenile Justice Board.

On a co-joint reading of disclosure statements Ex.PAA, Ex.PCC, Ex.PDD and Ex.PZ of appellants Ravi Kumar, Mukesh @ Ghasar, Rohtash @ Bablu @ Langur and Parmod @ Bhuru @ Bhuria made in First Information Report No.1133 dated 04.11.2006, it transpires that the appellants used to give lift to innocent persons/ passengers creating an impression in their mind that the vehicle is already occupied by some persons/passengers, who in fact were the co-conspirators. The innocent person waiting for a transport/lift to go home after the duty hours would get trapped and board the vehicle. He was then murdered by the appellants and

was looted by them. The jeep bearing registration No.HR-61-1154 was purchased by appellant Rohtash from PW21 Harish for a consideration of Rs.2,62,000/- and used to be driven by appellant Mukesh. This was the Modus operandi of the appellants and from their consistent version while making the disclosure statements there appears a reasonable ground to believe that the appellants conspired to commit the offence.

It is further noteworthy that PW22 A.S.I. Suresh Kumar, the Investigation Officer, deposed that after recovery of the dead body of Sachin Jain from the gutter near the Leisure Valley Park during the night intervening 06/07.11.2006, he obtained the copies of the disclosure statements made by the appellants in case bearing First Information Report No.1133 dated 04.11.2006 under Section 302/201 I.P.C., Police Station D.L.F., Gurgaon on 09.11.2006 and arrested the appellants and Lalit in the present case on 11.11.2006. He further stated that on interrogation appellant Rohtash made disclosure statement Ex.PD, Parmod Ex.PE, Mukesh Ex.PF, Ravi Kumar Ex.PG and Lalit Ex.PH wherein they unequivocally disclosed that they can get demarcated both the places i.e. the place from where they gave lift to a person in their jeep No.HR-61-1154 on the night on 29.10.2006 as well as the place where they had thrown the dead body in the gutter near Leisure Valley Park after looting and committing murder of that person. In pursuance of their disclosure statement, the appellants demarcated both the places. The demarcation memo Ex.PI relates to appellant Mukesh, Ex.PJ is of appellant Parmod, Ex.PK is of appellant Rohtash and Ex.PL pertains to appellant Ravi Kumar. The demarcation

memo Ex.PM relates to demarcation done by Lalit. From the above documents, it becomes evident that the appellants were five in number when they conspired and committed decoity and murder.

Once an inference is drawn from the evidence available on record that the appellants were party to the conspiracy anything said, done or written by the conspirators becomes admissible and relevant under Section 10 of the Indian Evidence Act. The said section reads as under:-

“Things said or done by conspirator in reference to common design. Where there is reasonable round to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

In **Kehar Singh and others vs. State (Delhi Administration)**

1988(3) S.C.C. 609 the Hon'ble Apex Court analyzed Section 10 as follows:-

“From an analysis of the section, it will be seen that Section 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the

conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it.”

In the case in hand, the significant issue for determination is the veracity of the disclosure statements Ex.PAA, Ex.PCC, Ex.PDD and Ex.PZ made by appellants Ravi Kumar, Mukesh @ Ghasar, Rohtash @ Bablu @ Langur and Parmod @ Bhuru @ Bhuria respectively in First Information Report No.1133 dated 04.11.2006 as well as the disclosure statements Ex.PD, Ex.PE, Ex.PF and Ex.PG again made by appellants Rohtash @ Bablu @ Langur, Parmod @ Bhuru @ Bhuria, Mukesh @ Ghasar and Ravi Kumar respectively in the present case.

Admittedly, the aforesaid statements were made by the appellants before a police officer while they were in custody of the police. Section 25 of the Indian Evidence Act postulates that a confession made by an accused to a police officer cannot be proved against him. Additionally, Section 26 of the Indian Evidence Act stipulates that a confession made by an accused while in police custody cannot be proved against him. Therefore, in terms of the mandate of Sections 25 and 26 of the Indian Evidence Act, the disclosure statements made by the appellants could not be used against them. But then, in Section 27 there is an exception to the rule provided for by Sections 25 and 26 of the Indian Evidence Act.

For ready reference, Section 27 of the Indian Evidence Act is reproduced hereunder:-

“How much of information received from accused may be proved.- Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

As an exception, the above Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the truth of the confessional statement. Since it is the truth which a Court endeavors to search, Section 27 has been incorporated as an exception to the mandate contained in Sections 25 and 26 of the Indian Evidence Act.

In the case in hand, PW22 A.S.I. Suresh Kumar deposed that in pursuance of his disclosure statement made by appellant Rohtash, he got recovered one silver ring and one identity card bearing photograph of deceased Sachin Jain. These articles were identified by PW1 Abhey Jain and his companion Sunil Jain as belongings to Sachin Jain. Recovery of mobile phone Nokia-2300 in pursuance of disclosure statement made by appellant Mukesh is also proved. PW7 Mahesh Verma testified that the name of his shop is Paratham Mobile shop at Bharagav Palace near Bus Stand. He produced the relevant record and stated that on 20.05.2005 one Sunil Jain visited his shop and purchased Nokia mobile phone-2300 for a

consideration of Rs.3300/- and the number of the mobile was 9811069015. He tendered in evidence copy of the original receipt Ex.PD. Sunil Jain is father of deceased Sachin Jain and as stated by PW1 Abhey Jain that mobile of Sunil Jain was with the deceased when the occurrence took place.

The deposition of PW22 A.S.I. Suresh Kumar is that Lalit Kumar in pursuance of his disclosure statement got recovered a purse containing photograph of deceased Sachin Jain from his house which was taken in possession vide memo Ex.PP; recovery of a cheque book of Punjab National Bank in pursuance of a disclosure statement made by appellant Parmod was taken in possession vide recovery memo Ex.PQ; the wrist watch got recovered by appellant Ravi Kumar in pursuance of his disclosure statement Ex.PG and was taken in possession vide memo Ex.PR/ All the said articles were identified by father of the deceased as they belonged to his son. Thus recovery of various valuable articles which were in possession of the deceased prior to the occurrence stands proved at the instance of the appellants. The statement of PW22 A.S.I. Suresh Kumar with regard to the disclosure statement and recoveries was corroborated by PW1 Abhey Jain and PW2 Sanju Jain. The recoveries effected from the appellants in pursuance of the disclosure statement are admissible in evidence under Section 27 of the Evidence Act.

Learned counsel for the appellants argued with vehemence that apart from the fact that there is no direct evidence or eyewitness account against the appellants, the circumstantial evidence produced by the prosecution does not form a complete chain of events so as to leave no

doubt for the conclusion that the appellants committed murder of deceased Sachin Jain. Recoveries of various articles of the deceased from the appellants were apparently planted on them. There was no reason for the appellants to have kept the wrist watch, mobile phone, cheque book, a silver ring etc. of the deceased with so much care and caution. The articles recovered are easily available in the market and the identity card etc. could have been fabricated during investigation to connect the appellants with the crime. Learned counsel asserted that no independent public witness was joined either at the time of interrogation of the appellants or at the time of alleged recoveries made from them. The complainant, being friend of father of the deceased was an interested witness and therefore his statement and the statement of police officials do not deserve to be believed.

There appears no force in the argument of learned counsel for the appellants. Indeed, great care needs to be taken while evaluating the circumstantial evidence and the circumstances relied upon must be found to have been fully established and further the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt of the accused. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused, however far fetched it might be. The success of the prosecution on the basis of circumstantial evidence depends on the availability of a complete chain of events and there should be no missing links in the chain of events, but again it is not that everyone of the links must appear on the surface of the evidence since some of these links may only be inferred from the proven facts as was observed by Hon'ble

Supreme Court in *Paramasivam @ Paraman @ Kottiyan vs. State of Tamil Nadu, J.T 2002(8) SC 214.*

It stands proved from the evidence on record that on 06.11.2006 appellants Ravi Kumar, Mukesh @ Ghasar, Rohtash @ Bablu @ Langur and Parmod @ Bhuru @ Bhuria made disclosure statements Ex.PAA, Ex.PCC, Ex.PDD and Ex.PZ respectively during investigation of First Information Report No.1133 dated 04.11.2006. Each of them in his disclosure statement disclosed the occurrence during which after giving lift to a person from IFFCO Chowk they murdered him and looted him of his belongings and threw the dead body in the gutter near the Leisure Valley Park. PW1 complainant Abhey Jain, as stated by him in the First Information Report Ex.PA, got information in the night of 06.11.2006 i.e. the same day on which the appellants made disclosure statement in First Information Report No.1133 dated 04.11.2006, about presence of a dead body in the gutter near Leisure Valley Park, Sector-29, Gurgaon. On receipt of information, Abhey Jain alongwith Sanjay Jain went to the spot and saw the dead body. He met the police at around 3:15 a.m. on 07.11.2006 and got recorded his statement Ex.PA. PW22 A.S.I. Suresh Kumar accompanied by PW1 Abhey Jain and his companion Sanjay Jain went to the place where the dead body was lying. With the help of two sweepers the dead body was taken out and was identified as of Sachin Jain. PW1 Abhey Jain deposed that on search of dead body the personal belongings of the deceased such as wrist watch, mobile, silver ring, purse, identity card, cheque book which he used to keep with him were found missing.

Complainant PW1 Abhey Jain because of the anxiety and the news being sad may not have bothered to know the identity of the person who informed him that a dead body was lying in the gutter near the Leisure Valley Park but the fact remains that the same night after the appellants made disclosure statements with regard to the occurrence in question and also disclosed the place where they had thrown the dead body of the person picked up by them from IFFCO Chowk on the night of 29.10.2011 that the complainant PW1 got information about the existence of a dead body at that very place. The complainant and his companion rushed to that place and saw a dead body in the gutter which they identified was of Sachin Jain. He passed on the information to the Investigation Officer of this case who without any loss of time i.e. during the same night at around 3:15 a.m. on 07.11.2006 got recovered the dead body. As already discussed above, the articles in possession of the deceased when he was murdered were thereafter recovered from the appellants in pursuance of their disclosure statements Ex.PAA, Ex.PCC, Ex.PDD and Ex.PZ.

The above circumstances which have a complete chain of events give rise to the presumption postulated under Section 114 of the Indian Evidence Act that the appellants had committed the murder and decoity because of which they were in possession of the looted property. The disclosure statements made by the appellants in pursuance of which they got recovered the belongings of the deceased, demarcated the place from where they had made deceased Sachin Jain board their vehicle and the place where they had thrown his dead body after he was murdered and

looted, are admissible under Section 10 of the Evidence Act. The cumulative effect of all the facts so established is consistent only with the hypothesis of guilt of the appellants and with no other hypothesis.

Accordingly, we find no ground for intervention in the judgment of conviction recorded by the trial Court against the appellants. The order of sentence also needs no interference. Hence, the appeal filed by the appellants is dismissed.

(HEMANT GUPTA)
JUDGE

(SNEH PRASHAR)
JUDGE

08.01.2016
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