

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

CRA-D No.686-DB of 2010

Date of Decision: 21.01.2016.

Babu Lal

....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. Vikas Lochab, Advocate for the appellant.

Mrs. Shubhra Singh, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

Appellant Babu Lal was held guilty and was convicted for the commission of offence under Section 302 of the Indian Penal Code (for short, "I.P.C.") and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one year vide judgment of conviction dated 25.05.2010 and order on quantum of sentence dated 27.05.2010. It was ordered that the period of detention already undergone by the convict during investigation, enquiry or trial shall be set off.

The story presented by the prosecution as garnered from the record, is recapitulated hereunder:-

On 15.02.2009, Sub Inspector Rohtash Singh accompanied by his official companions and by means of government vehicle bearing registration No.HR-35D-8383, of which Constable Roshan Lal was the driver, had come to bus stand Dharu-Hera in connection with patrol duty when Madan Lal son of Parbhati Lal, resident of Leelu Ka Bas, Police Station Shahpura, District Jaipur (Rajasthan) came to him and lodged a report. He stated that his youngest brother Nanu Ram was employed as driver on Trola No.RJ-14GB-6492 owned by Raj Kumar son of Ram Sahai, resident of Shahpura. Babu Lal son of Shankar Lal resident of Rampura, his nephew, was the second driver on the Trola. On 12.02.2009, Babu Lal and Nanu Ram alongwith the Trola had gone from Shahpura to Naraina (Delhi) for unloading the goods i.e. iron plates which they had brought from Bhav Nagar, Gujarat. On 14.02.2009, he (Madan Lal) received a telephone call from his brother Nanu Ram from Delhi that he would be coming back alongwith the vehicle in the morning. When Nanu Ram did not return till 3:00 p.m., he gave a telephonic call to Raj Kumar, owner of the Trola, who asked him to come to his office at Shahpura as some mis-happening had taken place with the Trola near Dharu Hera and Nanu Ram had died.

The complaint mentioned that on receipt of information, he alongwith his brother Babu Lal and Sarpanch Sunder Lal came to the place near village Kapriwas and saw the Trola parked on the service road and found that the dead body of Nanu Ram smeared in blood was lying in the

cabin of the Trolla. He suspected that Babu Lal, the second driver on the Trolla, had murdered his brother.

On the statement Ex.PD of complainant Madan Lal, a case under Section 302 I.P.C. was got registered at Police Station Dharu Hera and investigation commenced. Sub Inspector Rohtash Singh came to the spot where the Trolla was parked. He conducted inquest proceedings under Section 174 of the Code of Criminal Procedure (for short, "Cr.P.C.") qua the dead body lying in the cabin of the Trolla. A blanket wrapped around the face and neck of the dead body having bloodstains, vest (Baniyan) full sleeves tied over the blanket, an iron 'Kundi', a white coloured button and bloodstains found in the cabin were taken in possession by preparing memo Ex.PE. The Trolla was also taken in police possession and rough site plan of the place of occurrence was prepared by the Investigation Officer.

The appellant was arrested on 17.02.2009 by Jagdish Rai, Inspector/SHO. During interrogation, on 18.02.2009 the appellant suffered a disclosure statement Ex.PL in pursuance of which he got recovered two mobile phones, a spanner (Panna) used in commission of crime, which were taken in possession vide recovery memo Ex.PO. He also got recovered a T-shirt which he was wearing at the time of occurrence and had bloodstains on it and the same was taken in possession vide memo Ex.PO/2.

The appellant-accused was charge-sheeted for the commission of offence under Section 302 I.P.C., to which he pleaded not guilty and claimed trial.

As many as 15 witnesses were examined by the prosecution to

substantiate the charges.

After closure of prosecution evidence, in his statement under Section 313 Cr.P.C., the appellant-accused pleaded innocence and false implication.

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

Feeling aggrieved, the convict (appellant) preferred the instant appeal.

Heard the submissions made by Mr. Vikas Lochab, learned counsel representing the appellant and Mrs. Shubhra Singh, Additional Advocate General, Haryana.

At the very outset, learned counsel for the appellant argued that the allegation of the prosecution that the appellant committed murder of Nanu Ram, his co-driver on the Trola, is based merely on circumstantial evidence. No direct and substantive evidence could be led by the prosecution to prove that the appellant committed the murder since there was no eyewitness of the occurrence. The main circumstance on which the prosecution relied upon was that the appellant was a co-driver with the deceased on the Trola owned by PW9 Raj Kumar and on 12.02.2009 the appellant and deceased Nanu Ram had gone from Shahpura to Naraina (Delhi) with the Trola for unloading the goods brought by them from Bhav Nagar, Gujarat in that Trola and ultimately on 14.02.2009 the Trola was

found parked on the service road near village Kapriwas i.e. ahead of Dharu Hera towards Jaipur and the dead body of Nanu Ram having multiple injuries was found in the cabin of the Trola. Learned counsel asserted that only because the appellant was not present with the Trola was no ground to assume that he had committed murder of Nanu Ram. It is possible that the appellant had alighted from the Trola on the way prior to the occurrence. The motive for murder alleged by the prosecution was that Nanu Ram had received payment of Rs.56,700/- on behalf of PW9 Raj Kumar at Delhi and the appellant after committing murder of Nanu Ram had taken away that amount. Neither PW9 Raj Kumar could produce any written document to prove that Nanu Ram had received payment of Rs.56,700/- at Delhi after unloading the goods nor any money was admittedly recovered from the appellant after his arrest. That proved the motive to be just imaginative.

Elaborating his argument, learned counsel contended that the police allegedly recovered bloodstained shirt of the appellant, two mobile phones and a spanner (Panna) in pursuance of a disclosure statement made by him. The said allegation rested solely on the statement of police officials. No independent public witness was joined either at the time of recording of disclosure statement of the appellant or when the alleged recoveries were effected in pursuance of the disclosure statement. PW14 Jagdish Rai, Inspector admitted that there were shops and residential houses adjoining Police Station Dharu Hera where the appellant was interrogated and that there was a petrol pump at the back of which were the bushes in the vacant land out of which the bloodstained shirt concealed under the earth was got

recovered by the appellant. Neither the owner nor any employee from the Petrol Pump was joined in investigation to witness the recovery. Similarly, no effort was made to join in investigation the owner or some worker of the field from where the two mobile phones and 'Panna' were allegedly recovered by the appellant. In absence of independent corroboration, the solitary statement of the police officials could not be made basis for conviction of the appellant.

To us, there appears to be no force in the arguments of learned counsel for the appellant. PW1 Dr. Kamal Mehra, Medical Officer, C.H.C., Bawal, who conducted postmortem examination of the dead body of Nanu Ram, proved the postmortem report Ex.PB prepared by him. As mentioned in Ex.PB, as many as 11 external injuries were found on the dead body. In addition to the same, PW1 stated that on dissection of cranium he found haematoma on fronto temporal parietal area; fracture of left parietal bone; subdural haematoma on left parietal area; the lungs were congested; 3rd rib was fractured. The opinion regarding cause of death was stated as under:-

“Asphyxia as a result of strangulation and there was associated head injury. The strangulation is antemortem in nature and sufficient to cause death in ordinary course of life.”

In his cross-examination, Dr. Kamal Mehra clarified that Nanu Ram died due to strangulation and not due to the injuries described in the postmortem report. Meaning thereby that in addition to infliction of injuries on Nanu Ram, he was strangled and killed.

The statement of PW2 Madan Lal, brother of deceased Nanu

Ram that the deceased was employed as driver on Trola No.RJ-14GB-6492 was corroborated by PW9 Raj Kumar, owner of that Trola. PW9 also stated that Babu Lal-appellant was the second driver with Nanu Ram on that Trola. PW2 Madan Lal as well as PW9 Raj Kumar unequivocally deposed that on 12.02.2009 Nanu Ram and appellant Babu Lal had gone with the Trola from Shahpura to Naraina (Delhi) for giving delivery of the goods loaded in the Trola. PW2 Madan Lal testified that on 14.02.2009 his brother Nanu Ram informed him telephonically that he would be returning home next morning. PW9 Raj Kumar also deposed that on 15.02.2009 his Trola was unloaded at Delhi and Nanu Ram received Rs.56,700/- being the payment of fare. The above facts co-jointly indicate that upto receipt of payment and start of their return journey deceased Nanu Ram and appellant Babu Lal were together.

It is further in the deposition of PW2 Madan Lal that he waited for his brother to return upto 2:00/3:00 p.m. but when he did not come back, he enquired from the owner of the Trola who in turn asked him to come to his office as some mishappening had taken place and Nanu Ram had died. On receipt of information, he alongwith his brother Babu Lal and Sunder Lal Sarpanch came to village Kapriwas and noticed the Trola parked on the service road parallel to Delhi-Jaipur National Highway and found the dead body of Nanu Ram lying in the cabin of the Trola and appellant Babu Lal was missing.

The statement of PW9 Raj Kumar is that on 15.02.2009 he received a telephone call from brother-in-law of appellant Babu Lal, namely

Kailash Chand, who informed him that some mishappening had taken place with the Trolla. He immediately rang up appellant Babu Lal who told him that a Maruti car occupied by five persons was chasing the Trolla and out of fear he parked the Trolla at Kapriwas and ran away leaving Nanu Ram sleeping in the Trolla. He then asked Babu Lal to lodge complaint with the police. Babu Lal reached the police station first and narrated the occurrence and thereafter he too reached there.

From the above statement of PW9 Raj Kumar, it is evident that at the first instance the version of appellant Babu Lal was that some persons travelling in a Maruti car were chasing the Trolla and out of fear he stopped the Trolla near Kapriwas and ran away. Apparently, the story concocted by appellant Babu Lal was to mislead the owner of the Trolla and the police and at the first instance he even succeeded in doing so. However, when his story was found to be fake he was arrested.

PW9 Raj Kumar stated that prior to the occurrence Nanu Ram had complained to him that Babu Lal was a man of bad character and he be removed from the Trolla. PW2 Madan Lal in his complaint Ex.PD lodged with the police on 15.02.2009 stated that he suspected the co-driver Babu Lal for having committed murder of his brother in greed of the money in his possession. PW12 Sunder Lal, Sarpanch who accompanied PW2 Madan Lal to the spot where the Trolla was parked, corroborated the statement of PW2 on all material aspects told to him by Madan Lal and he too deposed that the second driver Babu Lal, who was not present with the Trolla, had killed Nanu Ram in greed of money.

The appellant was arrested on 17.02.2009 by PW14 Jagdish Rai, Inspector/SHO. During interrogation on 18.02.2009, the appellant suffered a disclosure statement Ex.PL.

Admittedly, the said statement was made by the appellant before a police officer while he was in custody. 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 statement made by the appellant could not be used against him. 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 discovered to as 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, in pursuance of his disclosure statement Ex.PL the appellant got recovered the shirt which he was wearing at the time of occurrence and had got bloodstained from the bushes behind Birendra Petrol Pump Khera Barrier. The shirt was taken in possession vide memo Ex.PM. The disclosure statement as well as recovery of his bloodstained shirt was proved by PW7 Constable Sandeep Kumar and PW15 Sub Inspector Rohtash Singh in addition to PW14 Jagdish Rai, the Investigation Officer. Further, in pursuance of his disclosure statement Ex.PL the appellant also got recovered two mobile phones and a spanner (Panna) used by him in commission of crime, from a mustard field of village Kapriwas as per the recovery memo Ex.PO. PW7 Constable Sandeep Kumar and PW15 Sub Inspector Rohtash Singh were the witnesses to the said recoveries also.

In addition to the above, another important circumstance which contributes to the conclusion regarding guilt of the appellant is that during initial investigation conducted by PW15 Retd. Sub Inspector Rohtash Singh, when dead body of Nanu Ram was found in the cabin of the Trollea and inquest proceedings were conducted, the Investigation Officer had taken in possession number of articles including a 'button' lying in the

cabin. The 'button' alongwith the full sleeves white coloured bloodstained shirt Ex.PM got recovered by the appellant in pursuance of his disclosure statement Ex.PL, was sent to Forensic Science Laboratory, Haryana (for short, "FSL") for comparison. It is mentioned in the report Ex.PX/2 of the FSL that the shirt marked 'exhibit-9(a)' had eight buttons intact on it including four on front side marked B1, B2, B5 & B6, two on colars marked B7& B8 and two on left arm marked B9 & B10. Two buttons on front side and two buttons on right sleeve were missing. After laboratory examination during which the button recovered from the cabin marked 'exhibit-I' was compared with the buttons marked B1, B2, B5, B6, B7, B8, B9 and B10 that were intact on the shirt marked 'exhibit-9(a)', the observation made was that button marked 'exhibit-I' was similar to button B1, B2, B5, B6, B9 & B10 on the shirt marked 'exhibit-9(a)'. Accordingly, the opinion given was that the button marked 'exhibit-I' could belong to the shirt marked 'exhibit-9(a)'. In other words, the button recovered from the spot matched with the buttons on the shirt of the appellant which he was wearing at the time of occurrence.

It appears that the button got detached from the shirt of the appellant which he was wearing when he was inflicting injuries or was strangulating Nanu Ram. No doubt, the money taken away by the appellant from Nanu Ram after killing him could not be recovered but that is of no consequence when the shirt having bloodstains worn by the appellant while committing crime, the 'Panna' used by him during the occurrence and the mobile phones concealed by him after the occurrence are proved to have

been recovered in pursuance of his disclosure statement. Moreover, money was not the only motive assigned to the appellant. PW9 Raj Kumar employer of the appellant and Nanu Ram deposed that prior to the occurrence Nanu Ram (deceased) had complained to him that Babu Lal (appellant) was a man of bad character and he be removed from the Trola. This was also a grievance in the mind of the appellant which led to murder of Nanu Ram.

Indeed, no public witness was joined in investigation by the police at the time of recording of disclosure statement Ex.PL of the appellant on 18.02.2009 as well as when recovery of the bloodstained shirt and recovery of mobile phones and 'Panna' in pursuance of disclosure statement of the appellant was made on 19.09.2009 but that has no adverse bearing on the merits of the case. The official witnesses PW7 Constable Sandeep Kumar, PW14 Jagdish Rai, Inspector/SHO and PW15 Sub Inspector Rohtash Singh proved the disclosure statement Ex.PL made by the appellant as well as the recoveries he got effected in pursuance of his statement. It is not judicious to discard the testimony of the official witnesses only on the ground that they belong to police force. There is nothing on the record to indicate that the official witnesses had any reason to be hostile against the appellant. The presumption that a person acts honestly applies equally to the police officials as to any other public person. Moreso, the public witness PW9 Raj Kumar, for whom the appellant and the deceased were employees of equal status, had consistently and categorically stated that deceased Nanu Ram was murdered by appellant

Babu Lal.

The decision of Hon'ble Supreme Court pertaining to the evidentiary value of circumstantial evidence in **Pawan Kumar vs. State of Haryana, (1998) 3 SCC 309** is as under:-

“Incidentally, success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without, however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence.”

In **Karihai Mishra alias Kanhaiya Misar v. State of Bihar, JT 2001(3) SC 191** the Hon'ble Apex Court laid down the well established rule of criminal jurisprudence as under:-

“It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused persons 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 endeavour 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 vs. State of Maharashtra](#) and recent decisions of this Court in the cases of [Ronny v. State of Maharashtra](#) and [Joseph v. State of Kerala](#).”

Reverting to the instant case, as discussed above, the circumstances proved by the prosecution form a complete chain of events and the cumulative effect of all the facts so established is consistent only with the hypothesis of guilt of the appellant. There are no missing links and hence the material and substantive evidence, may be circumstantial, adduced by the prosecution irresistibly proves that the appellant committed murder of deceased Nanu Ram.

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

(HEMANT GUPTA)
JUDGE

(SNEH PRASHAR)
JUDGE

21.01.2016
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