

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

Date of Decision: 2.06.2016

1. Criminal Appeal No.D-7-DB of 2005

Umed SinghAppellant

versus

State of HaryanaRespondent

2. Criminal Appeal No.D-19-DB of 2005

Suresh @ JardaAppellant

versus

State of HaryanaRespondent

3. Criminal Appeal No.D-32-DB of 2005

SatenderAppellant

versus

State of HaryanaRespondent

4. Criminal Appeal No.D-43-DB of 2005

Devender @ GanjiAppellant

versus

State of HaryanaRespondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present : Mr. Ashwani Bhardwaj, Advocate, and
Mr. Aditya Sanghi, Advocate,
for the appellant (in CRA No.D-7-DB of 2005).

Mr. J.S.Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate,
for the appellant (in CRA No.D-19-DB of 2005).

Mr. R.A.Sheoran, Advocate,
for the appellant (in CRA No.D-32-DB of 2005).

Mr. Vinod Ghai, Senior Advocate with
Mr. S.S.Sandhu, Advocate,
for the appellant (in CRA No.D-43-DB of 2005).

Mr. Anil Mehta, Additional Advocate General, Haryana,
for the respondent-State.

1. Whether Reporters of local papers may be allowed to see the judgment? **Yes/No**
2. To be referred to the Reporter or not? **Yes/No**
3. Whether the judgment should be reported in the Digest? **Yes/No**

SUDIP AHLUWALIA, J.

This judgment, being passed in CRA-D-7-DB-2005, 'Umed Singh Vs. State of Haryana', shall dispose of all the four appeals, as they have arisen from a common judgment of conviction and order of sentence, whereby the learned Additional Sessions Judge, Bhiwani, had convicted the appellants of the offences under Sections 302/34, 364 and 201 of the Indian Penal Code, 1860 (for short 'IPC'), in Sessions Trial No.166 of 1998, and were awarded sentences in accordance with law. The facts are being taken from CRA-D-7-DB-2005.

The background of the matter is that the FIR was lodged by one Rajesh Kumar (subsequently examined as PW/20 in the case) on 03.11.1993. The complainant had mentioned in his statement that he had purchased a new Jeep bearing Registration No.DL-2CE-9790 on 05.10.1993 from Gurgaon, which was parked for booking at Bus Stand Dadri. He engaged his maternal uncle Ashok Kumar as its driver and one Siri Bhagwan as the cleaner. It was also mentioned in the FIR that on 24.10.1993 in the morning, Jai Bhagwan, brother of the cleaner Siri Bhagwan had told him that on the previous date, four young persons (whom he could have otherwise identified, if they were present before him) had hired the vehicle from Bus Stand Dadri to Rohtak. These facts were

explained by stating that the Jeep coming from the direction of Bus Stop halted after Siri Bhagwan saw his elder brother standing on the T-point on Ghikara Road and told him about the Rohtak booking. Jai Bhagwan also ascended the Jeep and subsequently got down at Bus Stand Kamodh. But the Jeep did not return even after three days, on account of which, the complainant lodged a report of missing of his Jeep on 26.10.1993. He, thereafter, lodged the FIR against the four unknown persons, who had in the above manner “taken the vehicle with an intention to kill” on 03.11.1993.

Consequently, the FIR No.281 under Section 364, IPC, was drawn up in the Police Station Dadri, District Bhiwani on 03.11.1993. It transpires that the hijacked Jeep was recovered more than three years later on 12.03.1998, and it was formally seized on 02.04.1998 by the Deputy Superintendent of Police, Dadri, after having been identified by one Vijay Kumar Kaushik, when it was in an unfit condition for being driven. Subsequently, on 15.04.1998, another Jeep was intercepted and it was found to have been fitted with the engine of the stolen Jeep. The same was being driven by one Phool Singh. The appellant-Umed Singh was, thereafter, arrested on 09.05.1998 after which he gave a disclosure statement before the Police, which is Exhibit PNN. On the basis of his statement, human bones were recovered from a deserted well situated near Pipal in the area of Kheribura. Those bones were subsequently sent for forensic examination in the PGIMS, Rohtak. The same were examined by Dr. S.K.Dhatterwal, Reader in the Department of Forensic Medicines, who deposed as PW/5 in the case and submitted his report, which is Exhibit PM. The relevant extracts from the report are set out as below:-

*“Skull in exhibit-1 **could have belonged** to the person in the photograph in exhibit-3a (Photograph of Ashok*

*Kumar son of Sh. Ram Parsad) and skull in exhibit-2 **could have belonged** to person in the photograph in the exhibit-3b (Photograph of Bhagwan son of Sh. Chander Lal).*

Note:- After examinations the exhibits alongwith their original wrappers have been sealed with the seal of AD (BIOL)FSL (H). ”

In addition, the witness (PW/5) had submitted another report (Exhibit PN) in which he had mentioned that the injuries described in the postmortem report conducted in relation to the bones could have been caused by a knife separately produced before him, which allegedly had been recovered at the instance of appellant Suresh @ Jarda (vide Exhibit PLL).

In fine, therefore, the material on the basis of which the appellants have been convicted was actually the own incriminating statements of the convict Umed and his associates which allegedly led to seizure of the bones belonging to two deceased victims, as well as the knife allegedly used in killing them. Admittedly, there is no eye-witness to the alleged occurrence. Even Jai Bhagwan, who had allegedly seen the four young persons on 23.10.1993, was not examined to identify the appellants as the young men, who had allegedly booked the Jeep for Rohtak. Undisputedly, the statements of the appellants to the effect that they had killed the driver and the cleaner of the Jeep or dumped their bodies in the well or had stolen or concealed the Jeep are all totally inadmissible in evidence as the same were given while being in custody of Police Officers. Recovery of the bones or the knife allegedly used as the weapon of offence, is certainly admissible to that limited extent.

But there is nothing on record in the form of Forensic evidence such as by way of DNA profiling to establish that the bones recovered were actually those of the deceased Ashok Kumar or Siri Bhagwan. There is no

doubt that the opinion expressed by PW/5, Reader in the Department of Forensic Medicines, that the skulls examined by him “could have belonged to Ashok Kumar or Siri Bhagwan” is out and out a conjectural/surmising statement. It may be mentioned that this witness has also admitted in his cross-examination that the names and photographs of the deceased victims were supplied to him by the Police, and that it was his 'impression' alone in the given circumstances that the skulls in question could have belonged to those victims, although, there is no other cogent evidence in this regard on record.

For the aforesaid reasons, we are inclined to hold that conviction of the appellants on the basis of the aforesaid inadmissible as well as insufficient forensic evidence, which is purely circumstantial and speculative in nature, is unsustainable. The appeals are, therefore, allowed and convictions of the appellants in the aforesaid offences are set aside.

(MAHESH GROVER)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

2.06.2016
adhikari