

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

**In CRA-D-1017-DB-2015
Date of Decision : 11.8.2016**

Raja Ram..... Appellant

Versus

State of Haryana and othersRespondents

**CORAM : HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MRS. JUSTICE LISA GILL**

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Present: Mr. Jainainder Saini, Advocate
for the applicant/appellant.

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LISA GILL, J.

The applicant/appellant seeks leave to appeal against the judgment dated 6.6.2014 passed by the learned Sessions Judge, Fatehabad, whereby Ramphal-respondent No.2, Roshni-respondent No.3 and Bala-respondent No.4 have been acquitted of the charges for the commission of offences punishable under Sections 302, 201 read with Section 34 IPC.

Prosecution was set into motion on the statement (Ex.P5) of Raja Ram-applicant/appellant recorded on 10.5.2013. Raja Ram-complainant stated that he was a resident of village Gorakhpur and was running a hotel opposite Medical College, Agroha. He had three other

brothers. His brother-Ram Kumar (deceased) was an issueless widower. He

was residing with their other brother Radhey Sham. Ram Kumar (deceased) was working as a Tractor Driver with Om Parkash son of Birbal. Ram Kumar went on a tractor belonging to Om Parkash on 9.5.2013 at about 7:00 A.M. He left the tractor at the residence of its owner at 7:30 P.M. Ram Kumar did not return home and on 10.5.2013 the complainant, Raja Ram PW5, received a telephonic message intimating the factum of death of his brother Ram Kumar. On receipt of the said information, Raja Ram along with his brother Satpal Singh, proceeded to Dehman road Gorakhpur. They saw the dead body of their brother lying on the road. There were some scratch marks on the body of Ram Kumar. It was stated that an unknown vehicle had caused the accident resulting in fatal injuries to the complainant's brother Ram Kumar.

Formal FIR No. 162 dated 10.5.2013 (Ex.P38) was registered on the basis of the above said statement. FSL Report (Ex.P4) was prepared. Photographs (Exs.P26 to P37) were taken. Rough site plan along with the Crime Detail Form, Ex.P39 and Ex.P40 respectively, were prepared. Inquest report (Ex.P24) was drawn up. Dead body of Ram Kumar was shifted to General Hospital, Fatehabad, along with application (Ex.P23) with a request for conducting post-mortem. Post-mortem was conducted by Dr. Virender Kumar (PW11) and the post-mortem report is on record as Ex.P22.

The complainant Raja Ram recorded a supplementary statement (Ex.D1) on 13.5.2013, stating therein, that his brother Ram Kumar often used to visit respondent No.2 Ramphal. Therefore, PW5 Raja Ram along with his brother Satpal, proceeded to Ramphal's house.

They came to know from the neighbourhood, that on 9.5.2013 at

about 9:30 P.M. a fight had taken place in Ramphal's house. After some time a white coloured Marshal vehicle arrived there. The dead body of the complainant's brother was dumped in this vehicle by respondent-Ramphal, his wife Roshni and Bala but the driver of the vehicle refused to take the body in his car on discovering that the person was dead. Consequent thereto, all the three respondents took his brother's body back to the courtyard of Ramphal's house and in order to give a colour of an accident to his brother's death, Ram Kumar's body was thrown on the road. His death was caused by all the three accused persons by running a tractor over him. Ram Kumar (deceased) was stated to have illicit relations with the respondent-Roshni, wife of Ramphal, due to which Ram Kumar was done to death.

On the basis of the supplementary statement (Ex.D1) offence under Sections 279, 304-A IPC was deleted and Sections 302, 201 and 34 IPC were added. Special Report (Ex.P43), after substitution of the offences as above, was sent to the Illaqa Magistrate through Constable Rajinder. DSP Shamsher Singh was requested to reach the spot after being apprised of the development in the case. Accused Ramphal was arrested and he suffered a disclosure statement (Ex.P12) on 13.5.2013 giving details of commission of the offence by him as well as respondents No.3 and 4. Respondent-Ram Phal is alleged to have revealed in the above said disclosure statement (Ex.P12) that his wife Roshni and the deceased Ram Kumar had undesirable relations amongst themselves. Ram Phal had not suspected the deceased because he treated him like his brother. Now, his wife revealed her relations with Ram Kumar but she expressed that she wanted to get rid of Ram Kumar. The deceased Ram Kumar came to their

house on 9.5.2013 about 9/9:30 P.M. in an inebriated state. Ram Phal had also imbibed alcohol as he had purchased a tractor. Both Ram Phal and Ram Kumar started drinking alcohol together at Ram Phal's house. Ram Kumar got highly intoxicated. It is further stated that thereafter Ram Phal and his wife placed Ram Kumar before the rear tyres of their tractor. Ram Phal started the tractor while his wife kept holding Ram Kumar. Ram Phal ran the tractor over Ram Kumar. After squirming for two or three (2-3) minutes Ram Kumar became still, on which Ram Phal's wife Roshni cried out. Upon hearing the noise, Shamu son of Manohar, Ram Phal's neighbour, arrived at his house. Ram Phal told Shamu that Ram Kumar was trying to start his tractor but fell from it and the tractor rolled over him. He asked Shamu to call for some vehicle. Shamu arranged for a white Marshal vehicle belonging to Joginder Singh son of Shukar Singh. Ram Phal and his wife put the dead body in the Marshal vehicle. Joginder Singh helped them carry Ram Kumar but when he realised that Ram Kumar was dead, he refused to take the dead body in his vehicle. Joginder asked them to remove the dead body from his vehicle. Ram Phal and his wife removed the dead body and took it to the courtyard of their house. Then Ram Phal's wife called his brother Mahender's wife Bala to their house. Ramphal, his wife-Roshni and sister-in-law Bala in consultation with each other, at about 1:30/2:00 A.M. in the night, wrapped/tied up the dead body of deceased Ram Kumar in a Plastic sheet (palli) and put the body on Ram Phal's back. Roshni and Bala caught hold of the feet of the dead body. They threw the dead body on Dehman Road and brought back the plastic sheet in which the dead body was wrapped to their house. It was stated that the plastic sheet was lying on a cot in Ramphal's house

which could be got recovered by him. He could also point out the place where Ram Kumar was killed by running a tractor over him. It was further stated that he could demarcate the place where the dead body was thereafter thrown by them. Ramphal disclosed that he could get recovered the tractor used in the commission of the offence as well as the mobile phone of the deceased. The tractor and the mobile were sent with his brother-in-law (sala), Mahender R/o Najafgarh, Delhi.

The said disclosure statement was attested by ASI Suresh Kumar PW17 and Bhal Singh son of Ganga PW9. Respondent-Ramphal led the police party to the place of occurrence and a rough site-plan (Ex.P44) was prepared. A plastic sheet (palli) in which the body of Ram Kumar was wrapped was got recovered by him and taken in possession by the police vide Memo (Ex.P14). Ramphal pointed out the place on the road leading from village Gorakhpur to Dehman where the dead body of Ram Kumar was recovered. Respondent-Bala was arrested on 14.5.2013 and she suffered a disclosure statement (Ex.P17) disclosing her complicity in the offence. Respondent No.3-Roshni was arrested on 14.5.2013 and she suffered a disclosure statement (Ex.P16). A subsequent disclosure statement (Ex.P6) was suffered by Ramphal on 15.5.2013 stating that in his earlier disclosure statement dated 13.5.2012 (Ex.P12) he had wrongly stated the tractor and mobile to be with his brother-in-law Mahender. In fact, he had hidden Tractor No. HYF-4487 and the mobile phone in the verandah of the residence of Ishwar S/o Sham Lal R/o Goprakhpur. The residence of Ishwar was constructed in the fields. A tractor Mahindra bearing registration No. HYF-4487 was recovered on the basis of disclosure statement (Ex.P6) by Ramphal along with a mobile phone of

Lava company without any SIM. Both the articles were taken in possession vide Recovery Memo (Ex.P7).

The police authorities moved an application (Ex.P25) seeking an opinion about the nature of injuries on the body of the deceased and specifically as to whether the injury marks on the dead body were of the rear tyres of a tractor and whether death could be caused due to the same. As per the opinion (Ex. P25/A), dated 11.6.2013 rendered by Dr. Virender Kumar, PW11, possibility of the injuries being caused by a tractor trolley was not ruled out.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Charges under Sections 302, 201 read with Section 34 IPC were framed against the accused on 22.7.2013.

The prosecution examined as many as 17 witnesses to prove its case. The accused while denying all the incriminating evidence and material put to them, pleaded innocence and false implication, due to party faction in the village.

Learned trial Court, on considering the entire facts and circumstances of the case as well as the evidence on record, acquitted respondents No. 2, 3 and 4 of the charges against them. It was concluded that the prosecution failed to prove its case beyond reasonable doubt against the accused. Joginder Singh PW7, the owner of the Marshal vehicle and PW8 Shamu have not supported the prosecution case. PW9 Bhal Singh and PW10 Atma Singh who are the witnesses to the disclosure statements suffered by the accused have denied that any such disclosure statements were suffered in their presence. It was observed by the learned trial court, that due to lack of motive, incomplete

chain of events and uncorroborated disclosure statements of the accused, the prosecution was unable to prove its case against any of the accused beyond a reasonable doubt. Thus all the accused were acquitted of the charges against them, by affording them benefit of doubt. Aggrieved from the said judgment dated 6.6.2014, the applicant/appellant has approached this Court.

Learned counsel for the appellant vehemently argues that all the respondents in their respective disclosure statements have clearly disclosed the commission of the offences by them. Details of the manner in which the complainant's brother Ram Kumar was done to death have been revealed by them. The medical evidence on record duly corroborates the prosecution version. While referring to Ex.P4 i.e. Report of the Forensic Science Laboratory, Madhuban (Karnal), it is submitted, that, it is proved on record that Ram Kumar was done to death by respondents No. 2 to 4 by running the rear tyre of a tractor over him. His body was thereafter thrown on the road to give it the colour of an accident. Learned counsel refers to the opinion/report Ex.P4 recorded by Dr. Joginder Singh, PW4, Incharge of the crime scene. The team headed by Forensic Science Laboratory, Madhuban had been called at the spot where the dead body was recovered on 10.5.2013.

Learned counsel submits that as per the observations in this report it is mentioned that some blackening 'may be of tyre marks' was present on the upper front side of the payjama and the opinion recorded was that the body may be transported from some other place. Therefore, the learned trial Court has committed a gross error in acquitting the accused of the charges against them. There is ample evidence on record to

convict the respondents despite some of the prosecution witnesses having turned hostile. It is, thus, prayed that the impugned judgment be set aside and respondents No. 2, 3 and 4 be convicted of the offences as charged and accordingly punished.

We have heard learned counsel for the applicant/appellant and have carefully scrutinized the record.

It is not in dispute that initially the complainant-Raja Ram stated on 10.5.2013 that his brother died due to injuries received in an accident caused by an unknown vehicle. FIR under Sections 279 and 304-A was thus registered. It is on the supplementary statement (Ex.D1) of the complainant recorded before SI Dilbag Singh PW16, that the offences under Sections 302, 201 read with Section 34 IPC were substituted in place of Sections 279, 304-A IPC.

At this stage it is relevant to note that the investigation of this case was taken over by SI Dilbag Singh PW16 from ASI Jai Narain PW14 on 13.5.2013. SI Dilbag Singh, PW16 has deposed that he received secret information on 13.5.2013 that death of Ram Kumar was not due to an accident but was a case of murder. PW16 thereafter contacted the complainant Raja Ram who got recorded the above-said supplementary statement, Ex.D1.

Consequent thereto the police swung into action and proceeded to arrest respondent No.2-Ramphal on 13.5.2013. Disclosure statement (Ex.P12) of Ramphal was recorded on 13.5.2013 and subsequently respondents Bala and Roshni were arrested on 14.5.2013. Their disclosure statements were recorded separately. Pursuant to disclosure statement Ex.PW6 stated to be suffered subsequently by the

respondent Ramphal on 15.5.2013, a tractor bearing registration No. HYF 4487 and a mobile phone of Lava company without any SIM was recovered from residence of one Ishwar Singh.

A perusal of the evidence on record clearly reflects that the learned trial Court has rightly acquitted the respondents of the charges against them. The prosecution case does not stand on a sound footing at all. The edifice of the entire prosecution case rests on the disclosure statements of the accused/respondents in police custody. The material witnesses have not supported the prosecution version. Medical evidence on record also does not advance the prosecution case in any manner.

It is settled position of law that a disclosure statement suffered by an accused in police custody cannot be used against him. It is hit by the rigors of Section 26 of the Indian Evidence Act, 1872. It is only in situations where any fact is deposed to as discovered in consequence of such information revealed in a disclosure statement which may be brought into use. Section 27 of the Indian Evidence Act, 1872 reads as under:-

“27. How much of information received from accused may be proved—*Provided that, when any fact is deposed 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.”*

There is no 'fact discovered' pursuant to the disclosure statement. The dead body had already been recovered on 10.5.2013 by the police. Similarly, the recovery of the tractor HYF-4487 or the mobile

phone pursuant to the disclosure statement (Ex.P6) suffered by Ramphal is of no avail to the prosecution. Apart from the fact that the recovery itself is suspect, neither the tractor or the mobile phone is proved to be connected with the commission of the offence. The prosecution has admittedly not examined Ishwar Singh from whose residence tractor No. HYF-4487 was recovered. Ishwar Singh was stated to be the owner of the premises. His connection , if any, with the accused is not on record. There is nothing on record to show why and in what circumstances Ramphal was permitted to hide the tractor at Ishwar's residence.

It is relevant to note at this stage that HC Hans Raj, PW15, is a witness to the disclosure statement (Ex.P6) by Ramphal as well as a witness to the recovery of the tractor HYF-4487 and the mobile phone pursuant thereto. HC Hans Raj, PW15 in contradiction to the investigating officer PW16, SI Dilbag Singh has stated that the recoveries were made from the residence (Dhani) of Dalip at Gorakhpur. PW16, SI Dilbag Singh has stated the recovery to have been effected from the premises (Dhani) of Ishwar. Neither Ishwar, nor Dalip have been examined by the prosecution. Further more, no independent witness was admittedly present or joined at the time of the alleged recovery. Radhey Shyam PW6, a brother of the deceased has affirmed that no one was present at the residence of Ishwar at the time of the alleged recovery. The tractor No. HYF-4487 is stated to be in the name of one Harbans Singh son of Teja. SI Dilbag Singh PW16 has stated that no proof of sale of the said tractor to Ramphal by Harbans Singh was obtained. Harbans Singh was not joined in the investigation.

Furthermore, PW9 Bhal Singh, a witness to the disclosure statement (Ex.P12) by Ramphal as well as the demarcation of the place (Ex.P13) pointed by Ramphal pursuant thereto, has not supported the prosecution case. He has denied that any disclosure statement was suffered by Ramphal before him or that any place of occurrence was pointed out in his presence.

Similarly, PW10 Atma Ram the witness of the disclosure statement, ExP16 by Roshni and Ex.P17 by Bala, has not supported the prosecution case. Therefore, reliance cannot be placed on the said disclosure statements to convict the accused.

It is relevant to note that Joginder son of Shukar Singh, (PW7), owner of the Marshal vehicle bearing registration No. PB13G-2401 and Shamu, PW8, have not supported the prosecution version. Joginder Singh has categorically denied that he was called by Shamu son of Manohar to the house of Ramphal for taking Ram Kumar to the hospital. Joginder Singh denied going to Ramphal's house at night on 9.10.2013. He denied that he ever helped the accused to put Ram Kumar in his vehicle and then refused to take Ram Kumar in his vehicle on discovering that he was dead.

Shamu son of Manohar Lal, PW8, has also not supported the prosecution version. He has specifically denied that he was ever called by Ramphal or that he arranged for any vehicle for taking Ram Kumar. Shamu has denied having ever visited Ramphal's house at night on 9.10.2013 or ever having heard any noise emanating from a fight in Ramphal's house. None of the neighbours of Ramphal who are alleged to have disclosed the factum of a fight at 9:30 p.m. on 9.5.2013 in Ramphal's house have been

examined. Thus, the prosecution's attempt to project the deceased having been last seen in the company of the accused is futile and unsuccessful.

Contention of the learned counsel for the applicant/appellant that the medical evidence on record corroborates the prosecution version is unfounded and not supported by the evidence on record. The opinion of Dr. Virender Kumar (Ex.25/A) that possibility of getting injuries due to tractor tyre or the report of Dr. Joginder Singh, who inspected the scene of crime, by itself cannot be sufficient to connect respondents No. 2 to 4 with the commission of the crime. There is nothing on record to prove that it was the accused persons who had run over Ram Kumar with a particular tractor at a particular place and caused his death and thereafter transported his body to another place. As per the Post Mortem Report (Ex.P22, the following injuries were observed on the dead body:-

- i) A lacerated wound of size 5 x 0.5 cm present on middle aspect of right foot.
- ii) Multiple abrasion of various sizes and shape on right middle thin and medial aspect of lower third of right leg.
- iii) Abrasion of size 2x0.25 cm near left lateral malleolus
- iv) Multiple abrasion of various shapes and sizes present on left shin.
- v) A bruise of size 10 x 4 cm present on right iliac region, extending to right upper thigh on dissection underlying haematoma present.
- vi) A contusion of sizes 10 x 5 cm present over upper sternum extending to right side of upper chest, on dissection underlying haematoma present.

- vii) A 5 x 5 cm bruise present over left side of chest medial to left nipple, on dissection haematoma present.
- viii) A bruise of size 4 x 2 cm present on the right side of lower chest and flank, on dissection haematoma present.
- ix) A bruise of size 20 x 4 cm on lower chest and extending to back on left side.
- x) Multiple bruise covering whole lateral side of left forearm, extending to dorsum of left hand.
- xi) A lacerated wound of sizes 6 x 5 cm over base of ring finger of left hand with exposed all soft tissue and tender and underlying bone fractured and protruding out of the wound.
- xii) Multiple bruise on left elbow, hand and shoulder.
- xiii) Multiple bruise present on right upper back.
- xiv) Multiple bruise of various shapes and shin present on medial aspect of right thigh.
- xv) Multiple bruise present on forehead.
- xvi) Conjunctiva of both eye bulging. State Vs. Ramphal etc. 12
- xvii) A lacerated wound of size 5 x 2 cm present on base of index finger of left hand and exposed underlying soft tissue and tendon exposes.

PW12, Dr. Virender Singh in his cross-examination states that the possibility of the injuries having been suffered in a road side accident could not be ruled out. He further admits that there is no mention of fracture of any of the ribs of the deceased. The viscera of the deceased

was not preserved for chemical analysis. There is no evidence on record to prove that tyre marks of the recovered tractor were present. There is no mechanical examination of the tractor. The report of Dr. Joginder Singh also fails to connect the accused persons with the commission of the crime. Even if it is presumed that the body was transported to the spot of recovery, that by itself is not sufficient to connect the accused with the crime. Admittedly, the plastic sheet (palli) in which the dead body was stated to be wrapped, was not visibly blood stained. This plastic sheet (palli) was never sent for forensic examination. The Hon'ble Supreme Court in ***Vijay Shankar v. State of Haryana*** (2015) 12 SCC 644 while reiterating the basic principles in a case based on circumstantial evidence has held as under:-

*“The normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence vide ***Sharad Birdichand Sarda v. State of Maharashtra***. The same view was reiterated in ***Bablu v. State of Rajasthan***.”*

The prosecution has miserably failed to prove its case beyond

reasonable doubt, against the respondents. Suspicion however strong can never take the place of proof. In the instant case, the evidence on record does not suggest a hypothesis which points solely to an irresistible conclusion of the guilt of respondents No. 2, 3 and 4 and to no other conclusion.

The learned trial court has acquitted the above said respondents vide the well reasoned judgment after proper appreciation of the evidence on record. It has been held by the Supreme Court in ***Mahamadkhan Nathekhani v. State of Gujarat (2014) 14 SCC 589*** that merely if another view is possible, the appellate court would not interfere. Learned counsel for the applicant/appellant is unable to point out any illegality, perversity or infirmity in the impugned judgment dated 6.6.2014 passed by the Sessions Judge, Fatehabad, which calls for any interference by this Court.

Accordingly, leave to appeal is declined.

11.8.2016 <i>rupi</i>	(S.S.SARON) JUDGE	(LISA GILL) JUDGE
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Note: Whether speaking/reasoned	Yes / No
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Whether Reportable:	Yes / No
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