

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

**Criminal Appeal D-367-DB of 2015
Date of Decision: March 28, 2016**

Rajesh Kumar	Versus	Appellant
State of Punjab and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present : Mr. M.S.Kathuria, Advocate
for applicant/appellant.

T.P.S.MANN, J.

Appellant Rajesh Kumar, who happened to be the brother of deceased Nand Kishore has filed the present appeal for challenging the judgment dated 24.9.2014 passed by learned Additional Sessions Judge, Ludhiana, whereby, respondents No. 2 to 5 stand acquitted of the charges under Sections 302, 364, 201 read with Section 34 IPC.

The case of the prosecution, in nutshell, is that on 25.9.2010 at about 9.00 a.m., one Hardeep Singh had gone to the fields to fetch fodder and when he reached near the fields of Gulzar Singh, he saw dead body of an unidentified person lying near the drain. Hardeep Singh apprised Gulzar Singh and Sarpanch Amar Singh. The dead body could not be identified nor

the cause of death could be ascertained due to its decomposition. Accordingly, Hardeep Singh made statement before ASI Lakhbir Singh, who reached the spot and prepared the site plan. The dead body was kept in the mortuary for identification. The postmortem of the dead body was conducted by a Board of Doctors on 28.9.2010. The dead body was, thereafter, cremated. Ten finger tips of the dead body were sent to the Director, Finger Prints Bureau, Phillaur. However, as finger tips were decomposed, no finger prints were available.

Further case of the prosecution is that on 9.10.2010, the complainant Rajesh Kumar appeared before SI-Jangjit Singh and got recorded his statement to the effect that he along with his younger brother Nand Kishore dealt in marble. Their rivals Jalam Kumar, Manoj Kumar and Prishad Kumar, who were natives of Bihar and residing at Amloh Road, Khanna, were jealous of Nand Kishore due to flourishing of his business. On 19.9.2010, at about 4.30 p.m., the complainant along with his brother Nand Kishore was present at Bus Stand, Jalajhan where Jalam Kumar, Manoj Kumar and Prishad Kumar came on a motor-cycle and took Nand Kishore with them. At that time, Nand Kishore was carrying cash of Rs.70,000/-. The complainant came back to his quarter. He had been looking for his brother and also inquired about him at his native village in Bihar but he had not reached there. On

9.10.2010, when the complainant was watching television, information regarding unidentified dead body was telecast and he identified it to be that of his brother Nand Kishore from his clothes. The complainant suspected the involvement of Jalam Kumar and others in the murder of his brother and throwing his dead body in the drain. On the basis of the said statement, FIR No. 210 dated 9.10.2010 under Sections 302/201/34 IPC was registered at Police Station Sadar Khanna, District Ludhiana.

During the investigation of the case, Satnam Singh @ Satta and Boota Singh were also nominated as accused on the statements of Sanjay Kumar and Babu Kumar. After completion of investigation, challan against the five accused was presented. Out of them, Manoj Kumar was could not be tried as he absconded and was declared as a proclaimed offender.

At the trial of the case, the prosecution examined PW1 Rajesh Kumar complainant and PW15 Sanjay Kumar, who testified about seeing deceased Nand Kishore last in the company of accused Jalam Kumar, Manoj Kumar and Prishad Kumar. PW2 Kulwant Singh, who was to depose regarding making of extra judicial concession by the accused did not support the prosecution case and was declared hostile. PW12 Babloo Kumar testified that on 19.9.2010 at about 3.30 p.m., he went to take liquor at a wine shop situated near Bus Stand, Issru.

At that time, Jalam Kumar, Prishad Kumar and Manoj Kumar were sitting in the Ahata and taking liquor. They were known to him earlier as he was doing the work of fixing of marble. Prishad Kumar was saying that Nand Kishore was having more work than them, therefore, he be eliminated. All the above said accused were saying that they would finish Nand Kishore. After talking amongst each other, the above said accused went towards Nasrali side on two motor-cycles. On 11.10.2010, the witness came to know that Nand Kishore had been murdered and his dead body thrown in the drain near Nasrali. However, he deposed that he had not seen accused Boota Singh and Satnam Singh @ Satta at Ahata and, accordingly, he was declared hostile on the request of Additional Public Prosecutor and was allowed to be cross-examined.

When examined under Section 313 Cr.P.C. the four accused, namely, Satnam Singh @ Satta, Boota Singh, Jalam Singh and Prishad Kumar denied all the incriminating evidence collected by the prosecution against them and pleaded false implication.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court acquitted respondents No. 2 to 5 of the charges against them.

Having heard learned counsel for the appellant and on

going through the trial Court record, this Court finds that though PW15 Sanjay Kumar claimed to have seen deceased Nand Kishore last in the company of the accused on 19.9.2010 and had come to know about the murder of Nand Kishore on 11.10.2010, yet he made no attempt, thereafter, to either contact the police or the close relatives of the deceased regarding the involvement of the accused in the commission of the crime. He admitted that he had a talk with some persons but no such person to whom he had narrated the incident was examined by the prosecution. He further stated that on 19.9.2010 after lodging the report with the police he had gone to his native village but no such report lodged by him has been proved on the file. He also admitted during his cross-examination that he had started residing at Khanna from 19.9.2010 and before that he used to reside at Bihar. This demolishes his entire version. Being real brother-in-law of deceased Nand Kishore, PW15 Sanjay Kumar appears to have come forward to name the accused in the commission of the crime.

Similarly, PW1 complainant Rajesh Kumar, who had allegedly seen the deceased last in the company of the accused on 19.9.2010 did not report the matter to the police soon thereafter despite the fact that Nand Kishore did not return home for long. According to the witnesses, he had identified the dead

body of his brother Nand Kishore from his clothes while watching the television on 9.10.2010 and, accordingly, he had moved the complaint to the police. His conduct in not submitting the complaint earlier goes a long way to establish that he had not seen his deceased brother in the company of the accused.

PW2 Kulwant Singh, Sarpanch, who was to testify with regard to the extra judicial confession by the accused testified that respondents No. 2 to 5 never came to him nor they confessed their guilt. Accordingly, on the request of the Additional Public Prosecutor, he was declared hostile and subjected to lengthy cross-examination but nothing could be elicited in his cross-examination, which could support the case of the prosecution.

PW12 Babloo Kumar, who was witness to the criminal conspiracy being hatched by the accused admitted in his cross-examination that he was cousin of deceased Nand Kishore. He stated that on 19.9.2010, he had heard the accused conspiring to commit the murder of Nand Kishore but despite the same he neither informed the police nor any of family members of his cousin. He also stated that he never tried to meet the brother of Nand Kishore or his brother-in-law Sanjay from 19.9.2010 to 11.10.2010. He never apprised about the conversation heard by him to anyone during the said period. He

had also not gone to the police station nor he made any attempt to meet Nand Kishore so as to apprise him about the conversation heard by him.

It is the prosecution case that the accused had killed Nand Kishore by strangulating him with a cloth/parna, which was got recovered from one of the accused. However, as per the medical evidence, the cause of death was due to poisoning. Thus, on this ground also the prosecution case becomes highly doubtful.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court. The appeal is without any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

March 28, 2016
amit rana

**(SHEKHER DHAWAN)
JUDGE**