

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

**CRM No. 4639 of 2016 and
CRA-D-665-DB of 2015
Date of decision : 29.2.2016**

Ram Avtar

.....Appellant

v.

State of Haryana and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Bijender Dhankhar, Advocate
for the applicant

RAMENDRA JAIN, J.

As per the prosecution story, Dholia @ Jagbir left his house on motor cycle in the evening of 22.10.2011 with ₹ 86,000/- to book a new vehicle, but did not return home till late hours. On the next day, a telephonic information was received in Police Station Civil Lines, Hisar about lying of a dead body in the bushes in Sector 16-17, Hisar. Resultantly, Sub Inspector Hari Ram along with his team reached at the spot and recorded the statement of Ram Avtar present there. Ram Avtar, claiming himself to be the adoptive father of deceased Dholia @ Jagbir identified his body. In his statement, Ram Avtar

raised suspicion about murder of his adopted son Dholia @ Jagbir upon Varun, Surinder and Raja Gujjar in connivance with other persons with a motive that earlier also his real nephew was murdered by the brother of Surinder. Case under Sections 302/201/34 IPC was registered. Inquest proceedings and post mortem examination on the dead body of Dholia @ Jagbir was conducted. During investigation, one Amit Kumar made statement to the police that on 22.10.2011 he along with deceased Dholia @ Jagbir had gone to meet respondent/accused-Raman, but on the way Dholia dropped him near the Electricity Board and went to meet Raman on his motor cycle. On the basis of this statement, complainant Ram Avtar suspected that his son was murdered by respondents No.2 and 3.

Further, during investigation of case FIR No. 846 dated 29.12.2011 under Sections 498/401 IPC and 25 of Arms Act respondents No.2 and 3 were arrested and they suffered disclosures statements about the murder of Dholia @ Jagbir with the help of knife kept concealed by them in an abandoned temple of Sector 16-17, Hisar. That apart, respondent No.3 also suffered disclosure statement about his taking away the watch of the deceased and pursuant thereto got recovered the same. Accused Raj @ Raj Kumar and other persons named in the FIR were found innocent during investigation.

On commitment of the case to the Court of Sessions, the learned Additional Sessions Judge, Hisar charge sheeted respondents No.2 and 3 under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

The prosecution in support of its case, examined as many as following 20 witnesses :

PW1 ASI Sohan Lal and PW 2 C. Mohinder Singh through their affidavits Ex.PW 1/A and Ex. PW2/A respectively, testified about depositing of case property in the malkhana by SI Kul Bhushan and further depositing of the same with FSL authorities. PW 3 Lady ASI Sheela Devi had simply testified about recording of formal FIR Ex.P2 on receipt of ruka Ex.P1 and her endorsement Ex.P3 thereon. PW4 ASI Balwan Singh testified that during the investigation of this case, he and EASI Rameshwar Dass remained associated with the Investigating Officer PW15 Inspector Shri Dutt. He corroborated the testimony of PW15 Inspector Shri Dutt, Investigating Officer, qua the arrest of respondents No.2 and 3 and the steps taken by him during the course of investigation. PW5 Amit Kumar, PW6 Krishan Kumar and PW11 Ram Avtar fully supported the prosecution case in the manner as narrated above in earlier part of this judgment. PW7 Raju, Draftsman, testified about preparation of the scaled site plan of the place of occurrence Ex.P10 on the asking of the Investigating Officer. PW8 C. Mohinder Singh proved the photographs of the place of occurrence Ex.P11 to P20. PW9 EASI Suresh Kumar testified about the delivery of the special reports to the Illaqua Magistrate and higher police authorities. PW10 HC Ajit Singh testified that he remained associated with Investigating Officer SI Kul Bhushan in the investigation of the present case. PW12 SI Hari Ram, PW13 SI Ram Roop, PW15 Inspector Shri Dutt, PW17 Inspector Satyabir Singh, PW18 SI Kul Bhushan and PW 19 ASI Ranbir Singh have partially investigated the present case at different times. They deposed about the steps taken and adopted by them during the course of investigation and arrest of respondents No.2 and 3. PW18 SI Kul Bhushan also deposed about recovery of one knife and one watch belonging to deceased Dholia from

the respondents-accused Neeraj and Raman respectively, pursuant to their disclosure statements Ex.P21 and P22 respectively. PW14 Dr. Shelly Singh by way of her affidavit Ex.PW14/A testified that upon the application of the police and seeing the knife, she along with Dr. Rakesh Kaswan had opined that injuries No.1 to 5 on the person of deceased were possible with the same. PW16 Manoj, Executive Officer, Reliance Communication, proved the call details of respondent No.3-accused. PW20 Arvind simply testified about the finding of a mobile in the bushes of Sectors 16-17, Hisar three years back and handing over the same to the police.

The statements of the respondents-accused under Section 313 Cr.P.C. were recorded. In their defence, they examined HC Joginder Singh, who proved FIRs Ex.D1 to D22 registered against deceased Dholia @ Jagbir. They also tendered in evidence judgment dated 22.10.2012 pertaining to FIR No. 146 dated 29.1.2012 under Sections 398/401 IPC and 25 of the Arms Act.

After hearing learned counsel for both the sides and scanning the evidence on record, the learned trial Court acquitted respondents No.2 and 3 vide impugned judgment.

Learned counsel for the applicant argued that the impugned judgment of the learned trial Court is based on surmises and conjectures. PW5 Amit Kumar has testified that he had accompanied the deceased upto the office of Electricity Board, Krishna Nagar, Hisar and thereafter, deceased Dholia @ Jagbir after leaving him there, went to meet Raman on his motor cycle. The learned trial Court has erred in not considering that respondents No.2 and 3 pursuant to their disclosure statements had got recovered one knife which was used in commission of crime and the watch belonging to the deceased. This fact

alone was sufficient to record their conviction.

We have given our thoughtful consideration to the above submissions made by learned counsel for the applicant and perused the record.

The learned trial Court has rightly ignored the alleged recovery of watch from respondents No.2 and 3, because the purpose of looting the deceased has not been proved as the golden ring and chain were present on the body of deceased. Further, in the initial statements Ex.P27 and Ex.DA given by the complainant and PW5 Amit Kumar, nothing was stated about the watch worn by the deceased at the time of occurrence.

The prosecution has also not proved that the alleged knife recovered from the accused was sent to FSL, because at the time of its production in the Court, it was not bearing any seal of FSL. Secondly, weapon produced before Dr. Shelly Singh, has not been proved to be weapon recovered in the present case. No blood stain was found on the knife by the FSL authorities as per FSL report Ex.P60.

The prosecution has also failed to prove the alleged place where the motor cycle was left by the deceased and the place of occurrence where Dholia was allegedly murdered by respondents No.2 and 3, because the dead body of Dholia was recovered on 23.10.2011, whereas the motor cycle was recovered on 27.10.2011. The demarcation of the above places by the accused-respondents No.2 and 3, while in custody is inadmissible in evidence.

As per deposition of PW5 Amit Kumar, the deceased Dholia @ Jagbir after leaving him near the office of Electricity Board, Krishna Nagar, Hisar went to meet Raman on his motor cycle. Meaning thereby, PW5 Amit Kumar had not lastly seen deceased Dholia in the company of respondents No. 2

and 3 before his death. His deposition is completely based on hearsay.

In nutshell, the evidence produced by the prosecution is not conclusive in nature to prove the guilt of respondents No.2 and 3, beyond shadow of doubt. Last seen evidence is missing. Blood stained clothes of the accused- respondents were not recovered. The location of the deceased near the place of occurrence has not been sufficiently proved. The prosecution has failed to prove that the knife produced in the Court was the same which was used in the crime. Motive of the occurrence is also not established.

We have gone through the impugned judgment very carefully and find no irregularity or perversity in the same.

Accordingly, the application being completely devoid of any merit, is hereby dismissed. Leave to appeal is declined and appeal is dismissed.

(RAMENDRA JAIN)
JUDGE

(T.P.S. MANN)
JUDGE

29.2.2016
Ashwani