

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-210-MA-2016 (O&M)

Date of decision: 03.05.2016

Om Parkash and another

..... Applicants

Versus

State of Haryana and another

..... Respondents

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

1. *Whether Reporters of the 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. Manoj Kumar Sood, Advocate
for the applicants.

RAMENDRA JAIN, J.

CRM-4124-2016

Heard.

Sufficient cause has been shown to condone the delay in applying for leave to appeal. The application is, therefore, accepted. The delay of 5 days in applying for leave to appeal is condoned.

CRM-A-210-MA-2016

Being aggrieved, the applicants namely, Om Parkash
(complainant) and Dharmender Kumar son of Ram Kumar (deceased)

have filed the instant application under Section 378 (4) Cr.P.C. seeking leave to file the accompanying appeal against the judgment dated 25.09.2015, rendered by the learned Sessions Judge, Faridabad, whereby respondent No. 2-Manoj Kumar was acquitted of the charge under Section 302 of the Indian Penal Code (IPC).

2. Put pithily, in the intervening night of 17/18.04.2013 around 12.00 midnight, applicant No. 1-Om Parkash (complainant) went to attend his duty as a Security Guard in Charmwood Village situated near Surajkund, Faridabad and found Ram Kumar lying dead in a pool of blood outside the check-post. Some unknown person had killed Ram Kumar by inflicting injuries on his head. Immediately, he gave information about this fact to his senior officers as well as to the police.

3. On this information, initially, case under Section 302 IPC was registered and investigation was commenced. During investigation Section 392 IPC was also inserted. Respondent No. 2-Manoj Kumar was arrested. On interrogation, respondent No. 2 got recovered one gold chain, one gold ring and ₹ 1500/- belonging to deceased-Ram Kumar, besides the trousers worn by him at the time of committing murder. He also made extra-judicial confession and got demarcated the place of occurrence. Inquest proceedings and post-mortem on the dead body of Ram Kumar were got conducted. Site plan of the place of occurrence was also prepared. Statements of the relevant witnesses were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court against respondent No. 2.

4. On commitment of the case, respondent No. 2 was

charge-sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 12 witnesses, besides tendering the FSL report Ex. PJ.

6. In his statement under Section 313 Cr.P.C., respondent No. 2 denied the entire incriminating evidence brought on record against him and pleaded his false implication.

7. In defence, respondent No. 2 examined DW-1 Ram Kumar Saini, DW-2 Sachidanand Singh and DW-3 Constable Daya Nand Paswan.

8. On appraisal of evidence brought on record by the prosecution and hearing learned counsel for both the sides, the learned trial Court did not find itself in favour of the prosecution story and thus, acquitted respondent No. 2 by giving him benefit of doubt vide impugned judgment dated 25.09.2015.

9. Learned counsel for the applicants contended that the impugned judgment is based on surmises and conjectures. Recovery of one gold chain, one gold ring and ₹ 1500/- belonging to deceased-Ram Kumar from respondent No. 2 pursuant to his disclosure statement coupled with his extra-judicial confession before PW-6 S.K. Chaudhary was sufficient to convict him. The other witnesses have also fully supported the prosecution story.

10. After giving our thoughtful consideration to the submissions made by the learned State counsel, we find no merit in the instant application for the reasons to follow.

11. It is a blind murder case. There is no eye-witness account. The entire prosecution case is based on circumstantial evidence which is always considered as of very weak type.

12. Applicant No. 1/complainant-Om Parkash as PW-7, simply stated that he found Ram Kumar lying dead in a pool of blood with injuries on his person outside the check-post. Accordingly, he informed his senior officers and the police telephonically. Thus, he is not a witness to the murder of Ram Kumar.

13. Now it has to be seen that whether the alleged extra-judicial confessions made by respondent No. 2 before PW-6 S.K. Chaudhary and PW-10 Gulame Mustafa are sufficient to prove the guilt of respondent No. 2.

- (i) PW-10 Gulame Mustafa testified that he as well as respondent No. 2 was a rickshaw puller. On 18.04.2013, respondent No. 2 told him that he has committed murder of Ram Kumar, but did not meet him thereafter as he went to his village. After two months, the police had taken him and recorded his statement. He was apprehended by the police along with 7-8 other rickshaw pullers near Badkhal lake. They were kept in custody for two days and other rickshaw pullers were beaten up by the police. His hands were tied and due to fear of beating and also on account of the fact that he has to take care of his children, he apprised the police about the confession

allegedly made by respondent No.2. It seems that under fear, he might have mis-stated to the police about the complicity of respondent No. 2.

More so, the extra-judicial confession allegedly made by respondent No. 2 before PW-10 Gulame Mustafa is fully doubtful for the simple reason that nobody would make any confession before a stranger. During cross-examination, PW-10 had admitted that he does not know that where respondent No. 2 was residing or even from which village he hailed or what was his religion. He further admitted that despite the confession of respondent No. 2 before him about the murder of Ram Kumar, he did not take him to the police nor informed it to the respectables of Faridabad in this respect. It is not believable that a person after coming to know about some story of murder would leave for his native village and make his statement after two months before the police.

- (ii) PW-6 S.K. Chaudhary, Deputy General Manager of Ajay Enterprises, Faridabad has testified that on his intimation, the police had reached in his office, where respondent No. 2 had produced one gold chain, one gold ring, two ATM cards, one Nokia mobile phone, identity election card of Ram Kumar and other identity card issued by Ajay Enterprises which were handed

over to the police in his presence.

- (iii) A careful perusal of the testimony of PW-6 S.K. Chaudhary, shows that the same is unworthy of any credence in view of the statement of DW-3 Constable Daya Nand Paswan. According to him, vide DDR entries No. 352 dated 19.06.2013, 353 and 355 dated 20.06.2013, Ex. DW-3/B to Ex. DW-3/D, respectively, respondent No. 2 was arrested from Azam Nagar (Bihar) and brought to Police Station Suraj Kund, Faridabad on 20.06.2013. Hence, it is evident that respondent No. 2 was in police custody since 20.06.2013, therefore, it was not possible for him to make any extra-judicial confession before PW-6 S.K. Chaudhary on 23.06.2013. More so, this witness in his cross-examination had admitted that he did not know respondent No. 2 prior to the occurrence. Thus, it does not appeal to reason that respondent No. 2 would have confessed his guilt before him, though he was not known to him.

14. Contrary to it, applicant No. 2-Dharmender Kumar son of Ram Kumar (deceased) as PW-4 testified that around 6.30 P.M. on 24.06.2013 on asking of the police, he reached village Lakkarpur, where respondent No. 2 led the police party to his house and got recovered a gold chain, gold ring and ₹ 1500/- belonging to his father.

15. PW-12 ASI Jamil Ahmad has testified about sufferance of

disclosure statement by respondent No. 2 and recovery of a gold chain, gold ring and ₹ 1500/- in pursuance of the disclosure statement from his house at village Lakkarpur.

16. The above contradiction about recovery of gold chain, gold ring and ₹ 1500/- belonging to deceased Ram Kumar from respondent No. 2 has rendered the prosecution case doubtful.

17. Rest of the witnesses are of formal nature. The testimonies of none of the above witnesses have been able to prove the guilt of respondent No. 2 as none of them is an eye-witness.

18. Undisputedly, the occurrence took place in the intervening night of 17/18.04.2013, whereas the recovery of aforesaid gold ornaments was allegedly effected from respondent No. 2 on 24.06.2013 i.e. after about two months. It does not appeal to reason that respondent No. 2 would have kept concealed the gold ornaments of the deceased for about two months in a rented accommodation at village Lakkarpur.

19. There are major contradictions in the statements of PW-12 ASI Jamil Ahmad and PW-8 ASI Ashruddin. According to PW-12 ASI Jamil Ahmad, the keys of the room from where the recovery of gold ornaments was effected were lying in the window of the room and with the help of those keys, respondent No. 2 had opened the lock, whereas PW-8 ASI Ashruddin had deposed that the room from where respondent No. 2 got effected the recovery of golden ornaments was not locked, but otherwise it was closed. More so, the trousers allegedly got recovered from respondent No. 2 was never produced in the Court nor was ever sent to the FSL authorities to ascertain whether the same contained the blood

stains of deceased Ram Kumar.

20. We have carefully gone through the impugned judgment and found no illegality or perversity in the same.

21. The instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 03, 2016

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