

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

Criminal Appeal D-300-DB of 2003

Date of Decision: September 19, 2016

Jagat Pal and another

.Appellants

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present. Mr. K.D.S. Hooda, Advocate
for the appellants.

Mr. M.S. Sidhu, Additional Advocate General, Haryana.

T.P.S. MANN. J.

Jagat Ram and Mohinder, the two brothers, who are sons of Het Ram and Sheela Devi and residents of village Chabala Mori, Tehsil and District Fatehabad have filed the present appeal for challenging the judgment and order dated 20.1.2003 passed by learned Additional Sessions Judge, Fatehabad.

Vide impugned judgment and order, the trial Court convicted the appellants under Section 302 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo rigorous imprisonment for six months. At the same time, their father Het Ram and mother Sheela Devi, who were also tried

alongwith them, were acquitted of the charge under Section 302 read with Section 34 IPC.

According to the prosecution, Hanuman son of Molu Ram, got recorded statement Ex. PF with ASI Sadhu Ram, Police Station City, Fatehabad on 1.11.1999 at 1.10 p.m. at General Hospital, Fatehabad, wherein he stated that he was resident of village Chabala Mori and posted as a Store-keeper in CONFED Department at Fatehabad. His elder brother Om Parkash lived in a Dhani in the fields and staying with his family. At a distance of about two killas from his Dhani, there was Dhani of his uncle Het Ram. In order to go to his Dhani the complainant party had to pass in front of the Dhani of Het Ram. Though the passage was joint yet Het Ram and his family used to restrain them from using the passage. On 30.10.1999 when Om Parkash and complainant's wife Bimla Devi were using the passage, they were surrounded by Jagat Pal son of Het Ram and Sheela Devi wife of Het Ram in front of their Dhani and caused injuries to them with kassis (spades). On that very day Om Parkash and Bimla Devi got themselves admitted in Government Hospital, Fatehabad for medical treatment. On 31.10.1999, Om Parkash was sleeping in room No.5 whereas complainant Hanuman and his wife Bimla Devi were sleeping in room No.6. Next morning at about 4.00/4.15 a.m., the complainant heard a noise upon which he and his wife Bimla Devi came out of the room and went towards the

room where Om Parkash was lying. On opening the door they found that the light was on and Jagat Pal and Mohinder accused, after putting a knot of cloth around the neck of Om Parkash were pulling the same towards each other. Het Ram and Sheela Devi were standing towards the feet of Om Parkash and holding the cloth after tying the same. Om Parkash was struggling for life. All the four accused, on seeing the complainant and his wife became perplexed. Het Ram and Sheela Devi tried to scare the complainant and his wife away by raising an alarm that they would also be caught and finished. On this, the complainant and his wife came out running from the hospital. They reached office of CONFED from where after taking the scooter they went to their village. From the village, Om Parkash son of Sada Sukh, Surja Ram son of Birbal, Hanuman son of Hira Ram, Ram Narayan son of Ladhu Ram and Rameshwar son of Bhajan Lal were taken by the complainant after apprising them about the incident and on reaching room No.5 in the hospital at Fatehabad found Om Parkash lying by the side of the bed and his neck was lying tied with the iron pipe whereas his both legs were tied with a cloth and he was found dead. The complainant then went to the doctor and apprised him that Om Parkash had died. The doctor got the room locked and informed the police. The complainant, thereafter, called the sons of Om Parkash, who reached the hospital. As Jagat Pal and Mohinder after tying and strangulating Om Parkash

from his neck while Het Ram and Sheela Devi after tying his legs in order to overpower him, had committed his murder, the complainant sought taking of action against the accused.

On the basis of aforementioned statement made by complainant-Hanuman, FIR No. 413 dated 1.11.1999 under Sections 302/34 IPC was registered against the accused at Police Station City, Fatehabad. Thereafter, investigation was taken over by Inspector Rajesh Duggal, who got the scene of crime photographed and prepared inquest. The dead body of Om Parkash was sent for post-mortem. The scene of crime was inspected and site-plan prepared.

Jagat Pal, Het Ram and Sheela Devi-accused were arrested on 3.11.1999 whereas Mohinder-accused was arrested on 14.11.1999. After completion of investigation, report under Section 173 Cr.P.C. was prepared by the police and presented in the Court. The case was, thereafter, committed to the Court of Sessions for trial where the appellants and their co-accused were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined nineteen witnesses.

PW1 HC Kirori Mal, who had got the dead body of Om Parkash subjected to autopsy, handed over the parcels containing belongings of the deceased and viscera to the Investigating

Officer and proved seizure memo Ex.PA.

PW2 Assistant MHC Jaspal Singh proved the copy of FIR No. 305 dated 31.10.1999 under Sections 324/34 IPC Ex.PB.

PW3 Constable Raj Singh tendered in evidence his affidavit Ex. PC.

PW4 HC Ajit Singh also tendered in evidence his affidavit Ex. PD.

PW5 Balwant Singh, Draftsman proved the scaled site-plan Ex. PE of the place of the occurrence.

PW6 Constable Rajbir Singh deposed that he had delivered the special report to the Ilaqa Magistrate.

PW7 DSP Ram Kumar deposed that he had recorded the statement of Balwant Singh, Draftsman and prepared report under Section 173 Cr.P.C. on completion of investigation.

PW8 HC Om Parkash tendered in evidence his affidavit Ex. PH.

PW9 Dr. A.L.Bajaj, Medical Officer, proved written information Ex. PJ which he had sent to SHO, Police Station City, Fatehabad.

PW10 Dr. T.R.Mittal, Medical Officer, CHC Dabwali, member of the board which conducted post-mortem on the dead of Om Parkash, proved the copy of post-mortem Ex. PN wherein he had noticed the following injuries on the deceased:-

1. There was a ligature mark 25 cm long and

1½ cm to 2 cm wide. Transversely placed over the lower part of larynx going to back of neck on right side near occiput just below it and going on left side upto a level 7.5 cm below the mastoid region. Base was reddish. The ligature was slightly deep and well defined. On dissection there were abrasions in the skin adjacent to the left side of the ligature mark. On dissection there was extravasation of blood in the subcutaneous tissues under the ligature mark and in the neck muscles around the ligature. There was fracture of the larynx and upper ring of trachea. Larynx and trachea were congested and contained frothy mucous. The hyoid bone was fractured.

2. Stitched wound 1.5 cm on the right upper part of chest on the back on scapular region on lateral aspect.
3. Contusions reddish 8 cm x 3 cm on left side of the neck just above the left part of the ligature mark. Slightly obliquely placed starting just above the ligature and going to occipital region.

According to Dr. T.R.Mittal, the cause of death was asphyxia as a result of strangulation which was ante-mortem in nature and sufficient to cause death in ordinary course of life.

PW11 Dr. N. Chakrawarti, Medical Officer, General Hospital, Fatehabad deposed that he conducted medico-legal examinations of Smt. Bimla wife of Hanuman and Om Parkash

deceased on 30.10.1999 and proved copies of the medico-legal reports Exs. PN and PO respectively.

PW12 ASI Om Parkash deposed that he recorded the statement of Smt. Bimla on 31.10.1999 with respect to the previous occurrence and on its basis he got registered FIR No. 305/1999 (Ex.PO/1) under Section 324 read with Section 34 IPC.

PW13 Devi Lal, Ahlmad in the Court of Shri Mewa Singh, Sub Divisional Judicial Magistrate, Fatehabad proved the record of case FIR No. 305 dated 31.10.1999, Police Station Sadar, Fatehabad.

PW14 Subhash Chander, Photographer proved the negatives Exs. P8 to P14 and photographs Exs. P15 to P21 which he had taken at the scene of occurrence on 1.11.1999.

PW15 Hanuman deposed in detail regarding the occurrence.

PW16 Smt. Bimla Devi, another eye-witness of the occurrence, supported the statement of PW15 Hanuman.

PW17 ASI Sadhu Ram deposed about the various steps taken by him at the initial stage of investigation.

PW18 Suresh Kumar, son of deceased Om Parkash, testified that on 1.11.1999 at about 9.30 a.m his uncle Hanuman had narrated the facts regarding the occurrence.

PW19 DSP Ramesh Duggal, the then SHO also deposed about the steps taken by him during the investigation of

the case culminating into presentation of the report under Section 173 Cr.P.C.

Before closing the prosecution evidence, learned Public Prosecutor tendered in evidence report Ex. PT of Chemical Examiner.

When examined under Section 313 Cr.P.C., all the accused pleaded false implication. In their defence, they examined Upinder Anand, Pharmacist, General Hospital, Fatehabad as DW1, who produced the original bed head tickets of Sheela and Jagat Pal and proved their copies as Exs. DE and DF. He also deposed that as per the record, Sheela Devi was admitted in the hospital on 30.10.1999 at 8.20 p.m. and Jagat Pal-accused at 8.30 p.m. He also stated that one Nirmal Singh son of Sarwan Singh was admitted in the said hospital at 3.15 p.m. in the general ward.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court acquitted Het Ram and Sheela Devi accused of the charges against them whereas the appellants were convicted and sentenced, as mentioned above.

This Court has heard learned counsel for the parties, learned Additional Advocate General, Haryana and perused the evidence with their able assistance.

Learned counsel for the appellants has submitted that

nether PW15 Hanuman nor PW16 Bimla Devi was present at the time of the alleged occurrence. On the other hand, they had coined a story being present in General Hospital, Fatehabad in order to implicate the accused. PW17 ASI Sadhu Ram after being informed about the occurrence had reached the hospital but did not notice the dead body there and, accordingly, kept on searching for the relatives whereafter PW15 Hanuman was contacted and projected as an eye-witness of the occurrence. The medical evidence did not corroborate the ocular account. It was highly improbable that a person could be murdered by putting a noose around his neck and its ends being pulled by the accused. The injuries on the dead body did not suggest that those could be caused in the manner as suggested by PW15 Hanuman and PW16 Smt. Bimla Devi. It is further submitted that there was inordinate delay in the recording of the statement Ex.PQ at the instance of PW15 Hanuman and recording of FIR Ex. PF on its basis. Further, the accused stood admitted in the hospital at the time when the present occurrence is said to have taken place. Despite the same, the arrest of Jagat Pal-accused is shown on 3.11.1999. As such, the prosecution has failed to establish its case against the appellants and, therefore, they be acquitted of the charge against them.

Per contra, learned State counsel has submitted that the present occurrence had taken place on 1.11.1999 at 4/4.15

a.m. in Civil Hospital, Fatehabad pursuant to the occurrence which had taken place on 30.10.1999 in the village wherein Jagat Pal and Sheela Devi-accused, on the one hand and Om Parkash and Bimla Devi, on the other, had received injuries and because of those injuries, both the parties stood admitted in the hospital where the accused on finding a suitable opportunity strangled Om Parkash deceased by putting a noose around his neck and, thereafter, pulling the ends of ligature. The medical evidence fully corroborates the ocular account. It is also submitted that there was no inordinate delay in the making of statement Ex. PQ by PW15 Hanuman before the police, on the basis of which FIR Ex.PF was registered at Police Station City, Fatehabad.

According to the prosecution, the motive for the occurrence was the incident which had taken place on 30.10.1999 and in the said occurrence, Jagat Pal and Sheela Devi-accused on the one hand and deceased-Om Parkash and PW16 Bimla Devi, on the other, had suffered injuries. All four of them were admitted in General Hospital, Fatehabad on 30.10.1999 itself. Both PW15 Hanuman and PW16 Bimla Devi have deposed about the incident which had taken place on 30.10.1999. Their version regarding the said incident is trustworthy and, therefore, the previous enmity between the parties can be held to be the motive for the accused to cause injuries to Om Parkash, who, at the relevant time was lying

admitted in the hospital.

Merely because PW15 Hanuman and PW16 Bimla Devi were related to the deceased is not sufficient to discard their testimonies especially when their presence at the time of the occurrence stands duly explained and can be said to be natural. The admission of Bimla Devi in the hospital is not disputed. She had received injuries in the incident which had taken place on 30.10.1999 and in the morning of 1.11.1999, was lying admitted in the hospital. Hanuman is none else but the husband of Bimla Devi and in all probabilities he would be present in the hospital in order to take care of his wife Bimla Devi. In the adjoining room No.6, deceased-Om Parkash was lying admitted. On hearing the commotion, PW15 Hanuman and PW16 Bimla Devi rushed to the room where Om Parkash was lying and saw Jagat Pal and Mohinder-accused strangulating the deceased by putting a knot of a cloth around his neck and pulling the same whereas Het Ram and Sheela Devi were standing towards the feet of Om Parkash and tying his feet with a piece of cloth. When Hanuman and Bimla Devi tried to rescue Om Parkash, the accused scared them away by proclaiming that they would finish them as well. In order to avoid being caught by the accused, both Hanuman and Bimla Devi came out of the hospital and reached the office of CONFED from where they borrowed a scooter and went to their village. On reaching the village, they apprised the people about

the incident and when all of them reached room No.5 in the hospital at Fatehabad, they found Om Parkash lying dead. Hanuman, thereafter, informed the doctor, who got the room locked and informed the police. This was followed by ASI Sadhu Ram reaching the hospital and recording statement Ex.PQ of PW15 Hanuman on 1.11.1999 at 1.10 p.m. and on its basis, FIR Ex.PF came to be registered at Police Station City, Fatehabad on 1.11.1999 at 1.20 p.m. The special report sent through PW6 Constable Rajbir Singh was received by the Ilaqa Magistrate soon thereafter i.e. at 3.15 p.m. There was, thus, no delay in the making of statement by Hanuman before the police or registration of the FIR. Whatever delay occurred stands satisfactorily explained by the prosecution.

As regards the so called contradiction between the ocular account and the medical evidence, suffice it to state that the ligature used by the accused was made of pajama. The maximum width of the ligature mark was 2 cms. PW10 Dr.T.R.Mittal admitted in his cross-examination that this type of ligature mark was likely if the ligature was pulled from the backside. Further, there was a fracture of larynx and upper ring of trachea. The opinion of Dr. T.R.Mittal that width of ligature could not be more than 2 cms whereas the width of the pajama was more than 2 cms is vague because size of ligature of the pajama could vary depending upon the shape in which it is used.

If the pajama is tightly twisted and given the shape of rope. The width of such ligature could be upto 2 cms. The presence of ligature mark could also depend upon the force applied in pulling the ligature. The ligature on the front side could be more in comparison to the backside of the neck due to pulling of the ligature. As such, it cannot be said that there was any contradiction between the ocular account and the medical evidence.

Learned defence counsel has submitted that the condition of deceased Om Parkash at the time of occurrence on account of the injuries received by him in the incident of 30.10.1999 was not serious nor was any treatment to be given to him for the night. He was only admitted for the purpose of X-ray examination. As such, he could not be present in the hospital in the morning of 1.11.1999. However, the stand of the defence cannot be accepted as the photographs clicked by PW14 Subhash Chander indicate the place of occurrence to be the hospital and not any private house. As such, the presence of deceased Om Parkash in the morning of 1.11.1999 in the hospital stands duly explained.

During the investigation of the case, the police had recovered one dirty white terrycot pajama having a knot. On chemical examination, presence of blood was detected. When subjected to Serological test, the blood stains were found to be of

human origin through the blood group was inconclusive. The presence of blood stains on the pajama of the deceased which apparently had been used as a ligature as a knot was noticed on the same, further corroborates the prosecution version regarding the manner in which the occurrence had taken place.

In view of the above, no case is made out for any interference in the impugned judgment of conviction and order of sentence passed by the learned trial Court whereby the appellants stood convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each.

The appeal is without any merit and, therefor, dismissed.

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

September 19, 2016
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**(GURMIT RAM)
JUDGE**

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No