

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-447-DB of 2003

Date of Decision : September 21, 2016

Rajinder

.....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr. Rahul Rathore, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

Instant appeal has been filed by Rajinder son of Ram Kishan, resident of village Dabarpur, Tehsil Ganaur, District Sonapat for challenging the judgment and order dated 23/25.4.2003 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Sonapat.

Vide impugned judgment and order, the trial Court acquitted Krishan, co-accused of the appellant of the charge under Section 302 read with Section 34 IPC. However, the appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay an amount of Rs.5,000/- as fine.

According to the prosecution, on 8.8.2000 at about

10.30 a.m., Kuldip son of Dharambir, resident of village Dabarpur met SI Jagdish Chander, SHO, Police Station Mohana at Sitawali canal bridge and got recorded his statement Ex.PK that he was an agriculturalist by profession. On the previous day at 7.00 p.m., his father Dharambir and the appellant left for village Mahra for bringing pipes for the appellant on his tractor. When the complainant returned to his house at 12.00/1.00 during the night from his fields, his mother told him that his father had not yet returned and he should enquire from the appellant. On this, the complainant alongwith his uncle Azad went to the appellant and enquired from him, who replied that they had started from village Mahra at 10.00 p.m. after taking pipes and consuming liquor. On the way they met two four-wheelers in which buffaloes were loaded and one motorcycle on which 2 persons were travelling. They asked the father of the complainant by addressing him as Pardhanji to give side. On this, Dharambir gave them side. Then the driver of the four-wheeler asked Pardhanji to leave the appellant and come to his four-wheeler for consuming liquor. Saying this, Dharambir got down from the tractor and sat in the four-wheeler. The two four-wheelers and the motorcycle went ahead of his tractor. At about 11.00 p.m. when he reached bus-stand of village Dabarpur, he saw both the four-wheelers and the motorcycle parked there and 5/6 persons, including Dharambir, were consuming liquor. He had asked Dharambir to go to his house but he did not listen to him and kept on taking liquor with them. On this, he returned home. At about 1.00 o'clock two persons came on a motorcycle and stated that their lion

(referring to Dharambir) was lying amongst the kikkar trees near the bus-stand and he could bring him home. The complainant, alongwith his uncle Azad and one Rajinder Pandit went in search of his father. At about 5.00 a.m., they found him lying at a distance of 10/15 kadams towards the eastern side of the road and besmeared with blood. There were deep injuries on his neck and the chin and blood was oozing out. They thought that he was still alive and could be saved. Accordingly, they brought him home after putting him on a cot. Thereafter, they noticed that he was no more. According to the complainant, the murder of his father was committed by the driver and other riders of the two four-wheelers and the motorcycle with whom he had consumed liquor. The complainant kept on searching on his own for the motorcycle and the four-wheelers but could not get any clue. The complainant, accordingly, requested for taking appropriate action.

It is also the case of the prosecution that after making endorsement on the statement Ex.PK, SI Jagdish Chander forwarded the same to Police Station Mohana where on its basis, FIR Ex.PD came to be registered by MHC Umed Singh on 8.8.2000 at 11.30 a.m. under Sections 302/34 IPC. Special report entrusted to Constable Sukhbir was delivered to the Ilaka Magistrate on the same day at 2.40 p.m.

It is further the case of the prosecution that SI Jagdish Chander went to village Dabarpur while accompanied by complainant Kuldeep and prepared inquest report Ex.PB/1 on the dead body of Dharambir. He also recorded statements of Kamla, Azad and Virender

and sent the dead body for post-mortem through Head Constable Balwan Singh. He also inspected the spot and prepared rough site plan Ex.PL. He lifted blood stained chabbi (spanner) from the place of occurrence and took the same into possession vide memo Ex.PJ. He also lifted blood stained shirt, chappal, wrist-watch and a chain vide memo Ex.PJ/2. The wrist-watch was identified to be that of Krishan accused.

It is also the case of the prosecution that Dr. I.S. Ahlawat, Medical Officer, General Hospital, Sonapat conducted post-mortem on the dead body of Dharambir on 8.8.2000 at 1.00 p.m. and found the following injuries:-

- "1. Lacerated wound 7 x 2.5 cms. present over anterior part of the neck about 2 cm. above the larynx. Clotted blood was present. On exploration underlying muscles, nerves, blood vessels, trachea and oesophagus were extensively lacerated and cut.
2. Lacerated wound 3 x 1 cm. over anterior surface of neck just above the larynx. Clotted blood was present. On exploration the trachea was lacerated and cut open."

In the opinion of the doctor the cause of death was shock and haemorrhage as a result of injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was within a few minutes and between death and post-mortem 6 to 36 hours.

Further case of the prosecution is that on 11.8.2000, the appellant went to Randhir Singh, former Sarpanch of village Dabarpur and confessed that he had gone to village Mahra with the deceased on his tractor for bringing pipes. When they left from village Mahra, he met his sister's husband Krishan accused, resident of village Garhi Kesari, who was on a motorcycle. While he himself and Dharambir were returning on the tractor and Krishan on a motorcycle, an altercation took place between him and Dharambir on the question of some financial transaction and they sat there and discussed the matter. Hot words were exchanged. Once again, they started proceeding further. The deceased was on the tractor while Krishan was on the motorcycle. When they had covered a distance of 2½/3 acres, the deceased again started abusing him. Krishan could not tolerate the abusive language used against him by the deceased. Accordingly, he stopped his motorcycle and took out the chabi from the tool-box of the tractor. He pulled the deceased down from the tractor and gave a blow with the chabi under his chin. The appellant also took out a screw driver and gave blow with it at the same place where blow with a chabi had been given by Krishan. The dead body was, thereafter, thrown in the woods. The appellant, accordingly, pleaded with Randhir Singh to produce him before the police as he was having good relations with the police. However, Randhir Singh reprimanded him and sent him away. After some time, Krishan, with whom sister of Rajinder was married, came to him and also confessed that he had come to village Dabarpur 4/5 days back to

meet the appellant. On reaching the village, he came to know that the appellant had gone towards village Mahra. Accordingly, he left on his motorcycle for village Mahra and met the appellant and the deceased near village Mahra who were returning on a tractor. He turned his motorcycle and started returning with them. On the way, hot words were exchanged between the deceased and the appellant over money transactions. When they reached bus-stand of village Dabarpur, they sat down. Abuses were, once again, exchanged. When they proceeded further and covered a distance of 2½/3 acres, the deceased uttered filthy abuses, which he (Krishan) could not tolerate and, accordingly, took out chabi from the tool-box which he used for giving a blow under the chin of the deceased. The appellant also took out a screw driver and gave a blow with the same to the deceased. The dead body of deceased was, thereafter, thrown in the woods. Krishan, accordingly, asked Randhir Singh to produce him before the police. However, Randhir Singh told him that he would give a thought to his proposal. On 12.8.2000, Randhir Singh produced the appellant as well as Krishan, besides the tractor of the deceased and motorcycle of Krishan before Inspector Ram Sarup at village Dabarpur in the presence of SI Jagdish Chander. The appellant handed over screw driver after taking it out from his pocket, which was taken into possession vide memo Ex.PE. The appellant also made disclosure statement Ex.PG pursuant to which he got recovered the shirt which he was wearing at the time of committing murder and hung by him on a peg in his baithak, vide memo Ex.PG/1. Similarly, Krishan suffered

disclosure statement Ex.PH, pursuant to which he got recovered the T-shirt which he was wearing at the time of the occurrence and kept concealed by him in a bush on the right side in the field of one Ranbir vide memo Ex.PH/1.

It is also the case of the prosecution that Virender @ Mohan of village Dabarpur had appeared before SI Jagdish Chander that he had gone to village on 7.8.2000 for getting his tractor repaired and at about 10.00 p.m., when he was returning from Sonapat with his tractor, he found deceased Dharambir exchanging abuses with the appellant and Krishan and when he had asked Dharambir to accompany him to his house, he told him that he would return after some time.

Upon completion of the investigation and presentation of challan, followed by commitment of the case, to the Court of Sessions, the appellant and Krishan were charged for committing offences punishable under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined 12 witnesses.

PW1 Hawa Singh, who was posted as Halqa Patwari, testified that he had prepared scaled site plan Ex.PA on 5.9.2000 at the instance of PW Kuldip.

PW2 HC Jagmender Singh deposed that he had taken

seven sealed parcels alongwith seal impression to the Forensic Science Laboratory, Madhuban on 24.8.2000, which he deposited on the same day and handed over its receipt to the MHC.

PW3 Ram Pal, Photographer testified that he developed photographs Ex.P1 to Ex.P4 from the negatives Ex.P5 to Ex.P8 after taking the photos at the spot on 8.8.2000.

PW4 Kamla, wife of deceased Dharambir testified that about 3/4 months back at about 7.00 p.m., the appellant had come to her house and asked her husband to help him in bringing pipes for tube-well from village Mahra and her husband Dharambir and the appellant left on tractor. At about 11.00 p.m., she woke up her son Kuldip to inform him that Dharambir had not returned home. Accordingly, Kuldip and his uncle Azad went to the house of Rajinder. At about 5.00 a.m. both of them returned to the house alongwith the dead body of her husband. She also deposed that Virender had told her that there was a dispute between her husband and the accused at the bus-stand on the previous night due to some money transaction. She also stated that the appellant used to borrow money from her husband but without taking his family members into confidence.

PW5 Preet Singh testified that he had identified the dead body of his cousin Dharambir in the mortuary on 8.8.2000.

PW6 Dr. I.S. Ahlawat, deposed about conducting post-mortem on the dead body of Dharambir.

PW7 Constable Sukhbir deposed that on 8.8.2000, the MHC had handed over copy of the FIR, which he delivered to the Ilaqa Magistrate at 12.00 noon.

PW8 Randhir Singh testified that on 11.8.2000 the appellant had come to him and made extra-judicial confession. He also stated that Krishan accused had also come to him on the same day and tendered apology. On 12.8.2000, he took both the accused to the Police Station but on the way, they came across the police and, accordingly, both the accused were arrested. He also deposed that screw driver was produced by the appellant. He also deposed about suffering of disclosure statements Ex.PG by the appellant and Ex.PH by Krishan, pursuant to which they got recovered blood stained shirt and a T-shirt which were taken into possession vide recovery memos Ex.PG/1 and PH/1, respectively.

PW9 Kuldip Singh, who is son of deceased Dharambir testified that on 7.8.2000 at about 7.00 p.m., when he alongwith his family members was present in the house, the appellant had come and asked his father to go with him to the village for bringing pipes for the tube-well. His father, alongwith the appellant left for village Mahra on his tractor whereas he himself left for his fields. At about 12.00 mid night, his mother asked him to find out the whereabouts of his father who had not returned till then. Thereafter, he alongwith his uncle Azad went to the house of the appellant, who narrated cock and bull story about the whereabouts of his father. Then he, alongwith his uncle set out in search of his father. About 5.00 a.m., he found the dead body

of his father lying at a distance of 10 feet from the road leading to village Dabarpur. At about 7.00/8.00 a.m., he left for lodging the report but came across the police on the way and narrated the entire incident. The police then went to the place where the dead body was lying. Blood stained earth and blood stained shirt were lifted from the place of occurrence.

PW10 HC Umed Singh deposed about depositing of case property with him by SI Jagdish Chander on 8.8.2000 and again on 12.8.2000. On 24.8.2000 he handed over the various parcels to Constable Joginder Singh, who deposited the same in the Forensic Science Laboratory.

PW11 Inspector Ram Sarup testified about the arrest of the appellant and his co-accused Krishan on 12.8.2000 when they were produced before him by Randhir Singh. He also deposed that the appellant and Krishan produced the tractor and motorcycle which were taken into possession. He further deposed about the recovery of screw driver from the pocket of the appellant. Further he recorded the disclosure statements Ex.PG and Ex.PH of the appellant and Krishan pursuant to which, they got recovered a shirt and a T-shirt.

PW12 SI Jagdish Chander deposed that on 8.8.2000 he was posted as Station House Officer, Police Station Mohana. On that day, he was present on the canal bridge in the area of village Sitawali, where complainant Kuldip came and made statement Ex.PK. He made endorsement Ex.PK/1 and sent the same through Constable Daya Nand for registration of the case. Then he alongwith the

complainant visited the village where the dead body was kept. He prepared the inquest report Ex.PB/1. He then visited the place of occurrence; prepared rough site plan Ex.PL; lifted blood stained chabi; and also took into possession blood stained shirt, chappal watch and a chain. The case property was deposited with the MHC. On 12.8.2000, Randhir Singh ex-Sarpanch of village Dabarpur produced the two accused alongwith tractor and the motorcycle before Inspector Ram Sarup, who also recorded their disclosure statements and pursuant thereto, got recovered various articles vide various memos.

When examined under Section 313 Cr.P.C., the appellant and his co-accused stated that it was a false case.

In their defence, neither the appellant nor his co-accused Krishan examined any evidence.

After hearing learned counsel for the parties and perusing the evidence brought on the record, the trial Court believed the prosecution case against the appellant and sentenced him, as mentioned above whereas his co-accused Krishan was acquitted of the charges against him.

Learned counsel for the appellant has submitted that the prosecution has miserably failed to prove its case against the appellant. Neither there is any eye-witness of the occurrence nor the circumstantial evidence brought on record by the prosecution conclusively establishes that it was the appellant and the appellant

alone who had committed the murder of Dharambir. It has also been stated that the extra-judicial confession, said to have been made by the appellant before PW8 Randhir Singh, is a very weak type of evidence, more so, when said Randhir Singh was not related to the appellant. It is also submitted that there is no evidence on record that the appellant had any motive to commit the murder of Dharambir. Prayer has, accordingly, been made for acceptance of the appeal and for acquitting the appellant of the charge against him.

Learned State counsel has opposed the appeal by submitting that the prosecution has led cogent and convincing evidence to establish that the murder of Dharambir was committed by the appellant. All the witnesses examined by the prosecution have withstood the test of cross-examination and their testimonies, when considered are sufficient to uphold the conviction of the appellant.

It is true that there is no eye-witness of the occurrence but that by itself is not sufficient to hold that the prosecution has not been able to bring home guilt of the appellant. The present case is based on circumstantial evidence and all the circumstances, when taken into consideration lead to one and only conclusion that the murder of Dharambir was committed by the appellant.

PW4 Kamla, wife of deceased Dharambir had testified that the appellant used to borrow money from her husband but without the deceased taking her and his family members into confidence. She had also deposed that Virender had told her that he had seen her husband and the two accused at the bus-stand of village Dabarpur where they

were quarreling over some money transaction. Further, PW8 Randhir Singh, ex-Sarpanch of village Dabarpur had deposed that on 11.8.2000, the appellant had come to his house and tendered the apology for the wrong committed by him. The appellant had told him that when he alongwith Krishan as well as deceased Dharambir was returning, there was an altercation as he owed money to the deceased. He also stated that when they had reached bus stop of village Dabarpur, again an altercation took place regarding return of the money and it led to exchange of abuses. They again started but when they had covered a distance of 2½/3 acres, the deceased asked him for money which he had borrowed earlier. At that point of time, first Krishan accused had given an injury with the chabi on the throat of the deceased and, thereafter, the appellant took out a screw driver and thrust it in his throat. Thus, it stands proved that the deceased had been demanding the return of the money. The appellant was in no mood to return the amount to him and upon the insistence of the deceased, it was the appellant who had taken out the screw driver which he thrust in the throat of the deceased.

It is the case of PW4 Kamla that the appellant had come to her house at about 7.00 p.m. and called her husband to accompany him on his tractor to village Mahra for bringing pipes for the tube-well. In her presence the appellant and the deceased left the house. When the deceased did not return, she awakened her son Kuldip Singh to inform his uncle Azad about the same. Her son Kuldip Singh and his uncle Azad went to the house of the appellant and about 5.00 a.m.

they returned to the house with dead body of her husband. PW9 Kuldeep Singh also deposed that on 7.8.2000 at about 7.00 p.m. when he alongwith his family members was present in the house, the appellant came there and asked his father to go with him on his tractor for bringing pipes from village Mahra. In his presence his father Dharambir left alongwith the appellant for village Mahra on the tractor whereas he himself left for the fields. At about 12.00 mid night his mother asked him to find out whereabouts of his father who had not returned till then. Then he alongwith his uncle Azad went to the house of appellant who came up with a cock and bull story regarding the whereabouts of his father. Then both of them started searching for his father and noticed his dead body which was lying about 10 feet from the road leading to village Daburpur. PW8 Randhir Singh has also deposed about the appellant making extra-judicial confession before him on 11.8.2000 that he had taken the deceased from his residence for going to village Mahra. From the testimonies of the aforementioned three witnesses, it stands established that the deceased was last seen in the company of the appellant when they left the house of the former on his tractor for going to village Mahra for bringing pipes for the tube-well.

The testimony of PW8 Randhir Singh is also sufficient to convince this Court about the extra-judicial confession made by the appellant before him that he had an altercation with the deceased on the question of repayment of the borrowed amount which led to exchange of abuses. In his cross-examination PW8 Randhir Singh

deposed that neither he was a police tout nor having any relations with the SHO. However, he and the appellant belong to the same community. The house of the appellant was situated at a little distance from his house. He also deposed that the deceased belonged to his village but was not related to him. He went on to state that the appellant were 6/7 brothers and they had 4 or 5 sisters but he did not know their names. He also stated that the appellant was married in village Mehandipur. Merely because he did not know as to where the appellant's brothers were married is not sufficient to hold that the appellant would not have reposed confidence in him. Fact remains that Randhir Singh had earlier been the Sarpanch of the village and having held such a responsible position, the villagers would normally be reposing confidence in him. Therefore, this Court has no other option but to hold that the appellant had made extra-judicial confession before PW8 Randhir Singh.

As regards the medical evidence, it may be noticed that while conducting post-mortem, PW6 Dr. I.S. Ahlawat had noticed two injuries on the dead body. Both the injuries were on anterior part of the neck and lacerated in nature. Though he opined that injury No.1 could not be caused by the screw driver and the chabi yet injury No.2 could be caused by the screw driver Ex.P9 and not by any other article, i.e. chabi Ex.P10 alone. However, if both the screw driver and the chabi were used simultaneously, injury No.1 could be caused. The defence did not challenge his testimony during his cross-examination about injury No.2 having been caused by the screw driver, wielded by

the present appellant. The only suggestion put to him was that injury No.2 could not be caused by the chabi alone. Therefore, this Court has no other option but to hold that the appellant had caused an injury with the screw driver which was lacerated in nature and also ante-mortem in nature, besides sufficient to cause death in ordinary course of nature.

In view of the above, no case is made out for any interference in the conviction and sentence of the appellant.

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

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

**(GURMIT RAM)
JUDGE**

September 21, 2016
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO