

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

CRA-D-24-DB-2004

Date of decision: 28.04.2017

Main Pal and another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. S.S. Dinarpur, Advocate with
Mr. Subhash Godara, Advocate
for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

This appeal is directed against the impugned judgment and order dated 21.11.2003 passed by the Court of Additional Sessions Judge, Jagadhri vide which he had convicted accused Main Pal and Inder Pal for offences under Sections 302 & 364 read with Section 34 of the Indian

Penal Code and sentenced them as follows:-

Name of Convict	Offence	Sentence Awarded
Main Pal	Under Section 302 read with Section 34 IPC	Rigorous imprisonment for life.
	Under Section 364 read with Section 34 IPC	Rigorous imprisonment for seven years.
Inder Pal	Under Section 302 read with Section 34 IPC	Rigorous imprisonment for life.
	Under Section 364 read with Section 34 IPC	Rigorous imprisonment for seven years.

Both the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court by way of filing the present appeal submit that their appeal be accepted, the impugned judgment of their conviction and order of their sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated the prosecution story is that on 19.11.1998 complainant-Ilmo Devi wife of Sher Singh, aged about 45 years, resident of village Damopura Khurd accompanied by her son Fakkar went to Police Station, Sadar, Jagadhari and got her statement recorded wherein she stated that her husband Sher Singh was working in Haryana Animal Husbandry Department and had sought voluntary retirement from service in the year 1990; that using the money received by him as retiral benefits, he had purchased six acres of land in village Bailgarh from Ram Pal of

village Khadri and started cultivating that land; that her husband had agreed to sell land in question to Sham Lal, resident of Indri about six months earlier receiving ₹1,25,000/- as earnest money and had executed a registered sale deed on 11.11.1998 at Chhachhrauli. The balance sale consideration amount to the tune of ₹4,50,000/- so received by Sher Singh was deposited with Ram Pal son of Mehar Singh Gujjar as trust money; that on that very day two unknown persons came to their house, one of them was of young age whereas other was middle aged. They were talking in U.P. dialect and they told the complainant that they had come to see the poplar nursery and sent by her brother-in-law, namely, Shish Pal, resident of Nanota. The complainant, her son Som Pal and husband-Sher Singh had entertained them. After sometime the two visitors asked them to show the nursery, as such, Som Pal took them to village Bailgarh Ka Majra. Both the persons returned to her house before her son returned. Her husband served food to them in the evening and both of them stayed with her family for the night. On the next day i.e. 12.11.1998 at about 9:00 a.m. both the visitors told them that they were going to village Buria. According to the complainant thereafter, she, her husband and Ram Pal Gujjar took the money to Khadri Gramin Bank and deposited the same there. Then they returned home, thereafter, both those persons came to her house again. They were having half a bottle of liquor which they served to Sher Singh, husband of the complainant. Thereafter they brought one more bottle of liquor which they consumed and took meals with her husband. At about 4/4.30 p.m. they took tea; after that her husband went to bus stand with both of them. After sometime, he returned home along

with two other guests. Their names came to be later on known as Karta Ram and Kanwar Pal, residents of Jagadhri. They took tea etc. and went away. The complainant further stated that her husband had gone to the bus stand where the earlier visitors were present but after that her husband did not return home; that she and her family members searched for Sher Singh but in vain. On 24.11.1998 a missing report with respect to Sher Singh was lodged with the police. When Sher Singh could not be located despite best efforts the complainant became suspicious that both the visitors who had visited their house had taken away her husband by inducing him with intention to kill him. As such, she alongwith her son came to the police station and lodged report with police. The statement was thumb-marked by Ilmo Devi, her thumb impression was attested by SI-Lahori Lal (hereinafter referred to as Investigating Officer/I.O.) who had put his endorsement below such statement and on basis of said statement formal FIR for offence under Section 364 IPC was registered. Special reports were sent to the Illaqa Magistrate and other police officers.

Then the Investigating Officer got the sketches of accused prepared by getting description from Ilmo Devi. Those sketches were got photographed, then the police party went to village Dammopura where Fakkar son of Sher Singh produced letter Ex.PJ which was with respect to demand of ₹2 ½ lacs as ransom amount for release of Sher Singh by the kidnappers, that letter was taken into police possession. The Investigating Officer recorded statements of witnesses. On 26.12.1998 the Investigating Officer went to Police Post, Buria and took along with him ASI Hawa Singh, Smt. Ilmo Devi, Som Pal, Sawan Ram and other police

officials who were associated with the police party. They went to village Chhamayun in Uttar Pradesh in search of accused Inder Pal. They came to know that Inder Pal had just gone to village Buda Khera. The police party followed him and apprehended him from a place a little short of Chhamayun on identification of Smt. Ilmo Devi and Som Pal. Such accused was interrogated and he made a confessional statement, thereafter got demarcated the place of murder and place where dead body was thrown. Memo of demarcation Ex.PC was prepared in that regard. The Investigating Officer prepared rough site plan Ex.PU and recorded statements of witnesses. Chander Pal, the owner of the land had also arrived at the spot which Inder Pal had got demarcated stating that dead body was recovered from that place and the same had been taken away by the police of Police Station Bargaon. Then the police party went to Police Station, Bargaon and came across Rajbir Singh, SHO, who told that FIR No.113/1998 under Sections 302, 201 had been registered and inquest proceedings in that regard had been conducted by SI Shiv Pal Singh.

As a matter of fact on 21.11.1998 PW-Chander Pal had informed the police of Deoband that a dead body was lying in his field of sugarcane in village Nanhera Khurd. On the basis of that information formal FIR Ex.PG was registered. SI Shiv Pal Singh and other police officials went there and carried out police proceedings preparing report Ex.PB, the site plan of that place was prepared as Ex.PD. Dead body was sent to Civil Hospital, Saharanpur for getting the post-mortem examination conducted. Dr. Arun Kumar Jain, had performed post-mortem examination on the dead body on 22.11.1998 preparing report

Ex.PA giving the opinion that cause of death was due to asphyxia. After post-mortem examination, clothes of deceased were handed over by the doctor to the Police, which were deposited in Police Station, Badgaon. Asgar Ali, MHC has produced a parcel containing clothes of deceased, which were identified by Ilmo Devi and Som Pal to be those of Sher Singh. Investigating Officer prepared identification memo and those were converted into sealed parcel and then taken into possession vide memo Ex.PH. Thereafter the police party accompanied by Ilmo Devi came to Harnoli, Police Station, Sadar Yamuna Nagar, Inder Singh-accused was arrested from there, offence under Section 120-B IPC was added.

On 02.01.1999 the Investigating Officer went to Police Post, Buria where accused Main Pal was produced before him by respectables of village Chhamayun. Main Pal was accordingly arrested in this case. He was interrogated during the course of which he made a disclosure statement. He was produced before the Court on the next day and was remanded to police custody for two days. On 04.01.1999 accused Main Pal got recovered one wrist watch make Kohinoor from the place disclosed in statement Ex.PO, that wrist watch was identified by Som Pal to be of Sher Singh and it was taken into possession vide recovery memo Ex.PM. Thereafter accused Main Pal took police party to the place of murder and got the same demarcated. Memo in that regard was prepared as Ex.PF.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Jagadhri.

On presentation of *challan* in the Court of learned Additional Chief Judicial Magistrate, Jagadhri, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Sections 364, 302 IPC are exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Jagadhri vide his order dated 22.03.1999 committed the case to the Court of Addl. Sessions Judge (I), Jagadhri.

When the case was received in the Court of Addl. Sessions Judge, Jagadhri finding a *prima facie* case, charge for offence under Sections 364, 302 read with Section 34 IPC was framed against accused- Inder Pal and Main Pal whereas separate charge under Section 302 read with Section 120-B IPC was framed against accused- Inder Singh, to which they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as thirteen witnesses as detailed below:-

PW-1 Dr. Arun Kumar Jain who on 22.11.1998 while posted at SBD District Hospital, Saharanpur had conducted post-mortem examination on dead body of an un-known male, deposed that dead body was sent by SHO, Badgaon, District Saharanpur in sealed clothes with 12 police papers and the body was identified by accompanying constables. He stated that his observations were as follows:-

The deceased was average adult male aged about 35 years, body was in advance stage of decomposition. Eye-balls was also absent. Foul smell was emitting from the body. Rigor mortis had passed from whole of the body. Maggots were crawling all over the body. Both hands and both feet were absent from wrist and ankle joints respectively. Muscles of face, left lower limb and right leg were eaten by animals. Teeth, hairs, skull, sutures and bones at the joints were loosened. Muscles of both forearm were eaten by animals. Muscles in inguinal area distal part of penis were also eaten by animals. The skin was blackened and loosened. Length of body was 5'5". Soles were absent. Scalp hair were four cm. long and black. A cloth about 5 cm broad wrapped and tied with knot on one side around the middle of neck tightly.

Ante-mortem injury:-

- 1. Ligature mark 30 cm x 40 cm. around the middle of neck was horizontally placed just below the thyroid cartilage. On further exploring underneath the ligature mark clotted blood was present. Muscles underneath were decomposing. Cornua of Hyoid bone was fractured. Underneath 2 tracheal rings were also fractured.*

Larynx trachea and bronchi were congested. Lungs,

liver, spleen and kidneys were decomposing. Stomach was empty. Intestine contained faecal matter and gases.

The deceased died due to asphyxia as a result of ante-mortem strangulation about 5 to 7 days back from 22.11.1998.

He proved copy of post-mortem report as Ex.PA.

PW-2 Constable Dhani Ram, who had delivered the special reports in this case to Illaqa Magistrate on 06.12.1998 at 6.10 pm deposed in that regard.

PW-3 HC Balraj Singh a formal witness tendered in evidence his affidavit Ex.PC.

PW-4 SI-Gasita Singh deposed that on 21.11.1998 while he was posted as SI at Police Station, Bargaon, District Saharanpur he was informed by one Chander Pal that a dead body was lying at village Nanhera Khurd. Formal FIR No.113 of 1998 for offence, under Sections 302, 201 IPC was registered and he went to the spot. The witness deposed that he had prepared inquest report Ex.PB and sent the dead body to Civil Hospital, Saharanpur through C. Chander Has and C.Hori Lal for post-mortem examination. He had prepared rough site plan of the spot as Ex.PD and made enquiries from the persons from the surrounding area; that after post-mortem examination C.Chander Has and C.Hori Lal had submitted before him copy of post-mortem report, a parcel of clothes of deceased and other documents. He added that intimation regarding recovery of the dead body was sent to all the

police stations of the district of Saharanpur and pamphlets containing photograph of dead body were distributed in the police stations of the district. He proved photocopy of the pamphlet as Mark-A. The witness stated that after 04.12.1998 investigation of the case was handed over to second officer Shri. Rajbir Singh. The dead body was got cremated for want of identification.

PW-5 Chander Pal son of Chotta Singh, aged 50 years, agriculturist, resident of Village Nanhera Khurd, Police Station, Bargaon, District Saharanpur deposed that in the year 1998 at about 4.00 p.m., while he was working in his field, he observed foul smell coming from the field; that he had entered in the sugarcane field and found dead body of an unknown person lying there. One arm and one foot of the dead body had been eaten away by the animals and dead body was totally covered with worms; that he went to village and telephonically informed DSP, Deoband. Police came to the village at about 11/12 p.m. then he along with other villagers took police party to the spot where dead body was lying. He stated that police had visited the site many times and had got the dead body identified being that of a person belonging to village Chhimaun and identification memo Ex.PE was prepared. He stated that another identification memo Ex.PF was also created.

PW-6 Ilmo Devi, widow of Sher Singh-deceased deposed in consonance with the prosecution story, so did Som Pal son of Sher Singh appearing as PW-7.

PW-8 Sawan Ram, a relative of the deceased also supported the prosecution case.

PW-9 Shiv Pal Singh, who on 21.11.1998 while posted as SHO Police Station, Nargaon, District Saharanpur on coming to know that dead body of an unidentified person was found lying in jungle of Nanhera had gone there alongwith police officials deposed that they had prepared Panchnama and sent the dead body to S.B.D. Hospital, Saharanpur for post-mortem examination. He added that further investigation was carried out by some other Investigating Officer since he had been transferred from that police station.

PW-10 Karan Singh, Kanungo, Halqa Meerapur, Tehsil Jansath, District Muzaffarnagar (UP) deposed regarding his preparing site plan Ex.PS from Shajra as per orders of the Tehsildar adding that he had not gone to the spot.

PW-11 ASI-Hawa Singh who had carried out investigation in this case from 26.12.1998 onwards testified in that regard.

PW-12 Inspector Lahori Lal, who on 06.12.1998 was posted as SHO Police Station, Jagadhri, had lodged formal FIR in the matter on the basis of statement of Ilmo Devi, deposed regarding that besides with respect to the investigation conducted by him in the instant case proving various documents.

PW-13 Constable Asgar Ali, who on 21.11.1998 was posted as MHC in Police Station, Badgaon deposed regarding his part.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them, but they denied allegations submitting that they are innocent and have been falsely involved in this case.

Accused Main Pal took up a plea that he has been involved in this case on the false statement of Inder Pal son of Sher Singh, resident of Chhamayun. Nothing was recovered from him. No disclosure statement was made by him.

Accused Inder Pal took the plea that he has been falsely implicated in this case. He does not know the other two accused nor they are related to him.

During their defence evidence accused examined two witnesses.

DW-1, Suresh Kumar son of Ajmer Singh, Kanungo, Election Office, Yamuna Nagar proved true copy of the voter list pertaining to village Chhota Damopur Hadbast No.99 as Ex.DD.

DW-2 Fakkar Singh, son of Sher Singh (deceased), aged about 31 years, labourer, resident of village Damopur Khurd stated that the deceased was his father and he was an enrolled voter. He proved identity card of deceased issued by Election Commissioner of India as Ex.DE stating that this voter card was in his custody along with identity cards of other members of the family; that he, his father who had retired in the year 1992, at that time was 51 years of age, and had got voluntary retirement. The witness stated that one of the accused namely Inder

Singh is his father-in-law whereas he does not know the remaining two accused. He stated that his father had disappeared in the year 1998 and before the disappearance of his father, accused were not known to him and they never visited their house; that after disappearance of his father he was taken to Police Station Badgaon in the State of Uttar Pradesh. Some clothes were lying in the police station, but those clothes were not shown to him. He was accompanied by his mother, brother and maternal uncle and on that day he was not taken to any other place. He further stated that relations between his wife and his parents were cordial.

With that the defence evidence of accused got closed.

After hearing arguments, learned trial Court convicted and sentenced accused Main Pal and Inder Pal as mentioned above, whereas accused Inder Singh was acquitted of the charge framed against him by giving him benefit of doubt.

We have heard learned counsel for the appellants-convicts and learned Assistant Advocate General for the State, Haryana besides going through the record and we find that the impugned judgment of conviction and sentence of appellants-accused is not sustainable and is liable to be set aside due to following reasons.

This case is based upon circumstantial evidence with no eye-witness account of the incident being available. Law is well-settled that in such an eventuality the chain of the events and evidence must be complete and evidence adduced should be compatible with the guilt of

the accused, and in case, the evidence produced is not in consonance with the hypothesis of the guilt of the accused and vital links in the chain are missing, then conviction of the accused cannot be based. Furthermore, motive plays an important part in such type of case. When the instant case is examined in light of above stated principles, then it comes out that the chain of the events and evidence produced to prove the same does not get completed with many important links being missing.

The trial Court in Para No.11 of its judgment has enumerated the circumstances put forward by the prosecution to connect the accused with the crime.

i. That the deceased was taken away by Inder Pal and Main Pal accused and thereafter he was not seen alive and only his dead body was recovered.

ii. Motive.

iii. Identification of place from where dead body of deceased was recovered at the instance of Inder Pal-accused.

iv. Recovery of wrist watch of deceased at the instance of Main Pal-accused.

But we find that the trial Court has not properly appreciated the evidence and has wrongly interpreted the law while coming to the conclusion that all the four factors/circumstances stood established. A perusal of the statement made by complainant to the police which

formed basis for registration of the FIR goes to show that she had stated therein that her husband had gone to bus-stand with both the persons, after some time her husband came home alongwith two other persons whose names were later on known as Karta Ram and Kavar Pal, they took tea etc. and went away. Her husband went to bus stand alongwith the earlier visitors and after that her husband did not return, that raises a doubt in the mind as to whether Sher Singh had in fact gone alongwith the two accused because names of the guests were given by the complainant as Karta Ram and Kanwar Pal, whereas the earlier visitors were Main Pal and Inder Pal. Nevertheless even if these contentions are taken on their face value that means Sher Singh had gone to bus-stand alongwith accused Main Pal and Inder Pal and thereafter was not traceable. The missing report was lodged on 24.11.1998 i.e. after 12 days of Sher Singh going away from his house on 12.11.1998. The dead body of Sher Singh was found on 22.11.1998 i.e. after 10 days. The prosecution was required to prove on file that the deceased remained with accused Main Pal and Inder Pal from 12.11.1998 till he was murdered and there was no chance/opportunity for his going away to some other place. Therefore, there is nothing to show that deceased was spotted in company of such accused shortly before his death and no criminal liability can be fastened upon the accused for the said reason.

As regards the motive part, the prosecution has tried to establish that it was kidnapping for ransom inasmuch as demand of ransom of ₹2 ½ lacs in the form of letter Ex.PJ had been sent, but then

the prosecution had been unable to establish that such letter has been written by accused to the family members of the deceased. It is not proved that such letter is in handwriting of any of the accused or had been written at their instance, as such, it is not proved that the deceased was kidnapped, that too, for the purpose of demanding ransom by the accused. The trial Court has disbelieved that Inder Singh had hatched a conspiracy alongwith accused-convicts for murder of Sher Singh or Inder Singh having hired accused-convicts to get Sher Singh murdered. In Para No.17 of the impugned judgment, the trial Court has observed that conspiracy part of the case is not proved. It being so, there is no motive for accused-convicts to commit murder of Sher Singh.

Coming to next point that the place from where dead body of the deceased was recovered was identified at the instance of Inder Pal-accused, the same does not have much significance since that place was already known to the police as PW-5 Chander Pal had observed dead body in his sugarcane field and had informed the police in that respect on 21.11.1998 itself. Therefore, any subsequent statement made by accused-Inder Pal to point out that place does not have much effect.

As regards recovery of watch of deceased at the instance of Main Pal-accused the same has been disbelieved by the trial Court and it was so done rightly. The trial Court in Para No.16 has observed that statements of witnesses are contrary on important items like '*recovery of watch*' and '*arrest of accused*'.

DW-2 Fakkar Singh, a son of the deceased categorically stated that he does not know accused Main Pal and Inder Pal and was seeing them for the first time and that such accused had not visited their house before disappearance of his father in November, 1998. In his cross-examination he stated that theirs is a joint family, therefore, son of the deceased makes case of prosecution against accused-convicts doubtful.

Thus impugned judgment holding that charge for offence under Sections 364 and 302 read with Section 34 IPC against the accused Main Pal and Inder Pal is proved conclusively based upon wrong appraisal of facts of the case, erroneous analysis of the evidence and wrong interpretation of law. The prosecution has failed to prove its charge against accused beyond shadow of reasonable doubt. As per the law benefit of doubt should have been given to them but it was wrongly denied to them by the trial Court. Therefore, conviction and sentence of accused-appellants cannot be sustained, the same is set aside by way of acceptance of appeal and accused are acquitted of the charge framed against them.

The appellants are on bail. Bonds and sureties furnished by them are discharged.

28.04.2017 Gaurav Sorot	(T.P.S.MANN) JUDGE	(H.S. MADAAN) JUDGE
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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |