

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

1. CRA-D-245-DB of 2005

Dal Chand and another **.....Appellants**

v.

State of Haryana **....Respondent**

2. CRA-D-312-DB of 2005

Ramesh Kumar **.....Appellant**

v.

State of Haryana **....Respondent**

Date of decision : 9.3.2017

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present:- Mr. Vinod Ghai, Senior Advocate with
 Mr. Rohit Kaushik, Advocate, for the appellant Dal Chand
 (in CRA-D-245-DB of 2005)

 Mr. A.S. Cheema, Advocate, for the appellant
 (CRA-D-312-DB of 2005)

 Mr. Gagandeep Singh Wasu, Addl. AG, Haryana

MAHESH GROVER, J. (Oral)

By this order we will dispose of above numbered two criminal appeals. Appeal bearing No. CRA-D-245-DB of 2005 pertains to two persons, namely; Dal Chand and Abhay Singh, and appeal bearing No. CRA-D-312-DB of 2005 pertains to Ramesh Kumar, who all were convicted and sentenced life imprisonment under Section 302 read with Section 34

IPC in case FIR No. 84 dated 5.6.2004 registered under Sections 302/34

IPC at Police Station Ateli, District Narnaul.

The occurrence took place on 4.6.2004 somewhere at about 9.00 p.m. when the deceased Ishwar Singh had gone with the accused persons not to return thereafter, and at 6.00 a.m. on 5.6.2004, his body was discovered by Parbhati Lal, Lamberdar, who informed Badri Parshad- brother of the deceased, whose statement was recorded at 1.45 p.m., resulting in the FIR Ex.PR/1.

The prosecution set up a case of the deceased being in the company of all the accused persons to consume liquor at home and thereafter, to proceed to have more in a nearby liquor shop, whereafter he did not return and was discovered dead in the morning.

Consequently, the prosecution built up its case of murder against the present appellants on the basis of the statements of three eye witnesses i.e. PWs 13-Krishan Kumar, PW15- Zile Singh and PW17- Bhoop Singh, whose testimonies we shall deal at a later stage. Other witnesses namely PW11- Om Parkash, PW12- Hanuman, PW14- Smt. Ramesh, PW16- Deep Chand, PW21- Sanjay, PW23- Badri Parshad and PW24- Babu Lal, all testified that the deceased was in the company of the accused persons immediately preceding his death. In so far as these witnesses are concerned, there would be absolutely no necessity of offering any comment because their version converges with that of the prosecution i.e. the deceased was seen last in the company of the accused persons prior to his death.

The police completed its investigation to submit its report under Section 173 Cr.P.C. against all the accused persons but no specific role was assigned to them and neither was the manner of death disclosed

specifically. The trial Court framed the charges against the appellants, who pleaded not guilty and offered false implication as a defence with no specifics in the statements under Section 313 Cr.P.C.

The prosecution attributed a motive to the appellants of a money dispute resulting from a failed agreement.

We are at pains to notice that inquest report is not on the record and was never produced during the trial.

Learned counsel for the appellants while questioning the conviction and sentence awarded by the learned trial Court, referred to the evidence to contend that it was, in fact, an un-explained death, but if the material on record is construed in its correct perspective, it would throw up the cause of death on account of an accident and not due to any violence at the hands of the appellants.

As against this, the learned State counsel reiterates the culpability of the appellants to justify the conviction and sentence awarded by the learned trial Court by making an elaborate reference to the prosecution witnesses including the one, who had given the ocular version.

We have heard the learned counsel for the parties and perused the evidence as also the related material on record.

We would refer to the testimony of PW1 Dr. B.P. Gupta, who noticed the following injuries on the person of the deceased :-

- “1. Right side of face and temporal region was flattened and depressed. On dissection there was found a fracture of right temporal bone with clotted blood present in the sub cutaneous tissues. Dura mater was torn and brain mater was lacerated.
2. Reddish abrasion 2.5 x 1.5 cm on right knee joint;
3. Reddish abrasion 3 x 1 and 1 x 1 cm on left knee joint;
4. Contusion reddish in colour all around right eye;

5. Reddish abraded contusion 4 x 3 cm and another 2 x 2 cm on right side of back of abdomen.”

The cause of death was ascribed to a head injury, which was ante mortem in nature.

This testimony coupled with the forensic science laboratory report gives sufficient insight into the manner, in which the deceased died. We may extract the relevant portion of the report and form it a part of the narration, as it offers valuable insight into the occurrence :-

“On receipt of TPM No. 199 dated 6.6.2004 from S.P., Narnaul, scene of crime was visited by FSL Team on 7.6.2004. On reaching PS Ateli, Investigating Officer Sh. Jai Pal Singh, SI/SHO narrated that a dead body of one Sh. Ishwar Singh son of Mahanand, caste Ahir, r/o Salarpur was lying on the road from Salarpur to Gujarvas. It was further narrated that on the evening of 4.6.2004 Dal Chand son of Mulch Ram, Abhay Singh and one more person had gone to deceased's house for taking drink. One of them was the resident of Sadpur and was having a Motorcycle. After taking wine, all the four went to the wine shop while riding on the motor cycle to buy more of wine. Post mortem on the body of the deceased was got conducted on 5.6.2004. IO wanted FSL team to examine the place of occurrence and to go through the record and opine whether death of the record Ishwar Singh was due to an accident or he was murdered and thrown on the road. Place of occurrence was examined on 7.6.2004. Observation made were as under-

1. The alleged road from Salarpur to Gujarvas was 12 ft. wide. Broken pieces of stones/slabs and bricks were lying scattered on both side berms of the road.
2. Pool of blood was observed on the right side berm of the road from Salarpur to Gujarvas the alleged place where face of the deceased was in position.

3. Splashes/stains of blood could not be observed anywhere else on the spot.

Observation made from the photographs :

1. Dead body lying on the roadside with head towards Gujarwas i.e. on the right side berm of the road.
2. Both the chappels of deceased were lying on the spot.
3. A tear mark on the back of the shirt with number of pleats especially on the right side indicative of being dragged ahead after the shirt could have entangled on some hook.
4. A plastic part of could be form the front part of motorcycle, was lying on the spot.
5. Blood oozing out from nostrils and ear was observed.
6. No other injuries on the other parts of the body of deceased as seen in photographs was observed.”

All the accused persons were also subjected to polygraph test, which did not reveal 'any deceptive evidence'. The viscera of the deceased established the presence of ethyl alcohol in strength of 102.5 mgs%. Another report of the forensic science laboratory where the clothes of the deceased were examined, established graze marks on the right leg middle region (Ex.5-Dr).

All these pieces of evidence, when considered cumulatively, do throw up a plausible conclusion of the deceased dying in an accident and not loosing his life to a violent incident at the hands of the appellants. All the injuries on the person of the deceased are on the right side with graze marks on the body as also on the clothes.

Learned counsel for the respondent then referred to the cross examination of the doctor, who denies that such injuries could be on account of striking against a flat surface to contend that this would rule out the possibility of the death, on account of a road accident implying the road

as a flat surface. But this contention is un-sustainable in view of the forensic science laboratory's report pertaining to the scene of occurrence, where pool of blood was observed on the right side of the 'berm' of the road, where the face of the deceased was positioned. Evidently, after a fall, face of the deceased struck on the berm on the right side. This conclusion would further be strengthened when the consistent testimonies of all the witnesses are evaluated in the light of the fact of deceased consuming liquor at home to proceed to consume more, which is also born out from the presence of excessive ethyl alcohol than the permissible in the viscera of the deceased. All the injuries being on the right side of the person coupled with the graze marks on some portion of the body also on the right as also the clothes and the motor cycle itself, which was duly examined by mechanic to report a damage on the right side, strongly suggests a road accident to be the cause of death of the deceased.

The inference is further strengthened, if we see the evidence produced by the prosecution to bring home the guilt of the accused. Out of the three eye witnesses, one, PW 17- Bhoop Singh turned hostile, while the other PW15- Zile Singh was disbelieved, leaving the testimony of PW13- Krishan Kumar, to evaluation. His statement was recorded two months after the incident and even though he claimed to be an eye witness. His statement would be un-inspiring, considering that if he had witnessed the altercation between the deceased and the accused persons, he certainly would have disclosed this to his immediate family members and the FIR recorded at the behest of Badri Parshad-brother of the deceased, would certainly have mentioned such a fact. This witness too, therefore, cannot be relied upon to conclude his evidence as trustworthy. Besides, the version of

the deceased being beaten to death by danda, was first time revealed in the Court by Zile Singh, who has been rightly disbelieved. Apart from this, no weapon of offence was recovered. Similarly, testimonies of other witnesses i.e. PWs 11 to 14, PW21, PW23 and PW24 loose their significance largely, because they only stated about the deceased being last seen in the company of the accused, which in any case, is not denied by the appellants themselves and is also the prosecution case.

Not only this, one of the appellants; namely, Ramesh Kumar in CRA-D-312-DB of 2005, was not even named in the entire sequence of events.

Consequently, taking all the facts into consideration in their totality, we are of the opinion that the prosecution has miserably failed to bring home the guilt of the appellants and thus, we would have no hesitation to order the acquittal of all the appellants. Both the appeals are allowed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

9.3.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No