

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CRA-D-318-DB of 2012**
Date of decision : August 17, 2017

Devvrat @ DebuAppellant

Versus

State of HaryanaRespondent

II. **CRA-D-369-DB of 2012**

ParmodAppellant

Versus

State of HaryanaRespondent

III. **CRA-D-418-DB of 2017**

Saurav @ ChanchalAppellant

Versus

State of HaryanaRespondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Simarndeeep S. Sandhu, Advocate for the appellant
(in CRA-D-318-DB of 2012)

Mr. Rahul Deswal, Advocate for the appellant
(in CRA-D-369-DB of 2012)

Mr. Abhishek Yadav, Advocate as legal aid counsel
for the appellant
(in CRA-D-418-Db of 2017)

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.

T.P.S. MANN, J.

Five accused, namely, Devvrat @ Debu, Parmod, Saurav @

Chanchal, Jitender @ Kalwa and Raghu @ Amarjit were tried for committing the offence punishable under Section 302 read with Section 34 IPC on the allegations that on 13.2.2010, they in furtherance of their common intention voluntarily committed the murder of Suresh Kumar. Vide judgment and order dated 6.2.2012/10.2.2012, learned Additional Sessions Judge, Jhajjar acquitted Jitender @ Kalwa and Raghu @ Amarjit accused of the charge against them. However, the appellants, namely Devvrat @ Debu, Parmod and Saurav @ Chanchal were convicted under Section 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- each and in default of payment of fine, to further undergo imprisonment for two years.

Aggrieved of their conviction and sentence, accused Devvrat @ Debu filed CRA-D-318-DB of 2012, accused Parmod filed CRA-D-369-DB of 2012, whereas accused Saurav @ Chanchal filed CRA-D-418-DB of 2017. All the appeals stands admitted and notice issued to the State. Record of the learned trial Court has also been requisitioned.

As all the three appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, on 18.2.2010, complainant Umed Singh made statement Ex.PW2/A before SI Satbir Singh to the effect that on that day he had gone to the agriculture field of Vijay at Kulasi Road to bring fodder. He found the dead body of an unknown young man lying there. There were serious and sharp edged weapon injuries on the head of the dead body and a lot of blood was lying at the spot. He gave a call on telephone to the Police Station and, accordingly, on arrival of the police, suffered a statement on the aforementioned lines. Thus, FIR No.19 (Ex.PW14/A) under

Section 302 IPC was registered at Police Station Linepar, Bahadurgarh on 18.2.2010 at 2.10 p.m. Special report was prepared and sent to the Ilaka Magistrate, who received the same on 18.2.2010 at 3.20 p.m.

During the investigation it was revealed that on 13.2.2010, the deceased who was identified as Suresh Kumar, had gone in his Scorpio jeep No.HR-69-5656 but did not return home. He had been using the said vehicle for commercial purpose. His brother Surinder and his family member had searched for him on 13.2.2010 and again on 14.2.2010 but he could not be traced out. Ultimately, on 15.2.2010 Surinder had lodged a complaint at Police Station Murthal regarding disappearance of his brother Suresh Kumar.

It is further the case of the prosecution that after registration of the FIR on the basis of statement made by Umed Singh, SI Satbir Singh inspected the spot and lifted the blood stained earth, one pair of chappal, one artificial chain and one towel which were taken into possession. Rough site plan was also prepared. Thereafter, the dead body was removed from the spot. When SI Satbir Singh, alongwith other police staff reached near railway barrier, Surinder and Bajinder had met police party, who identified the dead body to be that of their brother Suresh Kumar. SI Stabir Singh, thereafter, prepared inquest report and moved application to CMO, Civil Hospital, Bahadurgarh for conducting post-mortem.

It is further the case of the prosecution that on 19.2.2010, Dr. Anil Rathi conducted post-mortem on the dead body of Suresh Kumar on 19.2.2010 at 1.00 p.m. and found the following injuries :-

1. An incised wound 24 cms. long, 5 cms.wide, bone deep was present anterioposteriorly placed cutting skin, S/C tissue, skull and brain, blood clots were

present .

2. An incised wound 8 cms. long and 5 cms.wide, bone deep was present on mid parietal area of scalp. Skull was fractured clots were present.
3. B/L shoulder joints were fractured.
4. Abrasions were present on posterior aspect of both shoulders.”

In the opinion of the doctor, the cause of death was direct injury on brain due to injury No.1 and hemorrhage and shock due to injuries No. 1, 2 and 3. All the injuries were ante-mortem in nature whereas injuries No.1, 2 and 3 were sufficient to cause death. Time elapsed between injury and death was instantaneous, whereas between death and post-mortem it was within two days.

It is also the case of the prosecution that 12.3.2010, SI Satbir Singh arrested Parmod, who on interrogation suffered disclosure statement that he alongwith Devvrat @ Debu, Saurav @ Chanchal, Jitender @ Kalwa and Raghu @ Amarjit had hatched a conspiracy to commit the murder of Suresh Kumar. He also disclosed that as per conspiracy he alongwith others had committed the murder of Suresh Kumar. On 16.3.2010, Parmod suffered another disclosure statement that he alongwith others was going in the aforementioned vehicle in order to sell it and when they reached near the mosque on Chandrawal Road, the jeep met with an accident. However, in pursuance of the said statement he did not identify the place where the jeep was actually lying. SI Satbir Singh made an enquiry from Police Station Ambedkar Nagar and collected relevant papers. The above mentioned vehicle was also taken into possession. On 18.3.2010, Jitender @ Kalwa and Raghu @ Amarjit were arrested and both of them admitted their involvement in the

case. On 19.3.2010 Jitender @ Kalwa suffered disclosure statement and on its basis got recovered 'Dao' from his residential house which was taken into possession. On 18.3.2010 Devvrat @ Debu was also arrested and on 19.3.2010, he suffered disclosure statement pursuant to which he got recovered one mobile phone belonging to deceased Suresh and another mobile phone which was used by him in the present case and blood stained jarsi. On 19.3.2010 Amarjit @ Raghu suffered disclosure statement and got recovered one purse alongwith two photos of deceased Suresh and one registration certificate of Scorpio bearing the aforementioned registration number. Jitender @ Kalwa was also interrogated and suffered disclosure statement pursuant to which he got recovered one mobile phone having no SIM card. On 5.4.2010, SI Satbir Singh sought opinion from the doctor as to whether injuries on deceased could be caused from recovered weapon dao. In response, Dr. Anil Rathi gave opinion Ex.P7/E.

After completion of the investigation, Inspector Varinder Singh prepared final report under Section 173 Cr.P.C. which was presented in the Court. The case was, thereafter, committed to the Court of Sessions where all the five accused were charged 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 as many as twenty two witnesses.

PW1 HC Girdhari, deposed about having taken into possession one Scorpio vehicle No. HR-69-5656 under Section 102 Cr.P.C. which was found in abandoned condition in front of Chandrawal Road, Delhi.

PW2 Umed Singh deposed to the effect that on 18.2.2010, he had

gone to the fields of Surje on Kulasi road for taking green fodder. He saw the dead body of an unknown person lying in the field. There was injury on the head of the dead body and blood was also lying there. He gave the requisite intimation to the police through his mobile phone. The police came to the spot and recorded his statement Ex.PW2/A in this behalf. The police lifted the blood stained earth, chappal and clothes from the spot vide recovery memo Ex.PW2/B.

PW3 Surender deposed that on 13.2.2010 his brother Suresh had gone in his Scorpio jeep No.HR-69-5656. He used the above said vehicle for commercial purposes. His brother did not come back on 13.2.2010. He and his family members searched for Suresh on 13.2.2010 and 14.2.2010 but he could not be traced out. On 15.2.2010, he had lodged a complaint about the disappearance of his brother with Police Station Murthal. On 18.2.2010, he reached Police Station Linepar, Bahadurgarh upon receiving intimation regarding the recovery of dead body of an unknown person. He had identified the above said dead body as that of his brother Suresh. On 19.3.2010, he had joined the investigation of this case. During interrogation accused Saurav had suffered disclosure statements Ex.PW3/A and Ex.PW3/B admitting his involvement in the crime. In pursuance of his disclosure statement accused Saurav got recovered Dao (weapon of offence) used in the crime vide recovery memo Ex.PW3/D. On the same day, during interrogation accused Devvrat @ Debu had suffered a disclosure statement (Ex.PW3/E) admitting his involvement in the crime. In pursuance of his disclosure statement accused Devvrat @ Debu got recovered the mobile phone of victim Suresh and a blood stained jarsi vide recovery memo Ex.PW3/F. On the same day, during investigation, accused Jitender had also suffered a disclosure statement

Ex.PW3/H admitting his involvement in the crime. The witness has also identified the 'Dao', Jarsi and mobile phone produced in Court as the articles recovered from the possession of the above said accused persons.

PW4 Naresh Kumar deposed that on 19.3.2010, he joined the investigation of this case. During interrogation accused Devvrat @ Debu had suffered a disclosure statement admitting his involvement in the crime. On the same day, during interrogation accused Amarjit @ Raghu had suffered a disclosure statement Ex.PW4/B admitting his involvement in the crime. He got recovered one purse of victim Suresh containing two photos of deceased Suresh and one photocopy of registration certificate. Above said articles were taken in possession vide recovery memo. Ex.PW4/C by the police.

PW5 ASI Tara Chand deposed that on 13.3.2010 he was posted as ASI in Police Station, Ambedkar Nagar, New Delhi. He received a call from control room regarding parking of an unclaimed vehicle on Chandrawal Road, near Masjid Madangir, New Delhi. He reached at the said place and took into possession a Scorpio vehicle bearing registration No.HR-69-5656 under Section 102 of Code of Criminal procedure.

PW6 Constable Sombir Singh deposed that he had deposited four sealed parcels which were handed over to him by MHC Pawan Kumar and delivered the same to FSL, Madhuban.

PW7 Dr. Anil Rathi deposed about conducting post-mortem on the dead body of Suresh and finding various injuries, as mentioned above.

PW8 Davender Singh, registered owner of the Scorpio vehicle, testified that he had sold his vehicle to Suresh Kumar deceased on 13.9.2009.

PW9 Constable Ram Dhan deposed that on 11.3.2010 SI Rajpal

deposited one sealed parcel containing a country made pistol and cartridge with him as he was Malkhana Moharrir of the Police Station.

PW10 Inspector Virender Singh deposited about preparing final report under Section 173 CR.P.C.

PW11 SI Karambir Singh deposited that Saurav @ Chanchal and Amarjit @ Raghu were arrested by him in case FIR No.31 dated 25.1.2010 under Section 392 IPC, Police Station Kharkhoda, Sonapat and on 18.3.2010 he had handed over their custody to SI Satbir Singh.

PW12 ASI Satbir deposited that he had obtained call details of four SIM numbers, i.e. 9050325072, Vodafone Haryana; 9671963308, Vodafone Haryana; 9992759402, Idea Haryana; and 9991961899, Vodafone, Haryana from 11.2.2010 to 12.3.2010 and thereafter, handed over the same to SI Satbir Singh. He further deposited that as per call details SIM number 9050325072 was registered in the name of Harvir, SIM No.9671963308 in the name of Prem, SIM No.9992759402 in the name of Vinod Sadai and SIM No.9991961899 in the name of Jitender.

PW13 Jasbir Patwari deposited that on the demarcation of SI Satbir Singh he prepared scaled site plan Ex.PW13/A with correct marginal notice.

PW14 SI Baljeet Singh testified that after registration of the FIR, special report was sent to the Ilaqa Magistrate through Constable Chand Singh.

PW15 Constable Chand Ram testified that he had delivered special report to the Ilaqa Magistrate, Bahadurgarh without any delay on his part.

PW16 SI Sethi, PW17 ASI Satish Kumar, PW18 Constable Devender Kumar, PW19 ASI Karambir Singh, PW20 ASI Pawan Kumar, PW21 ASI Satbir Singh and PW22 SI Satbir Singh deposed about the various steps taken by them during the investigation of the case.

When examined under Section 313 Cr.P.C. all the five accused claimed themselves to be innocent and falsely implicated in the case. They also stated that they had no concern with the offence in question in any manner.

In their defence, none of the accused adduced any evidence.

After hearing learned counsel for the parties and on going through the record, learned trial Court acquitted Jitender @ Kalwa and Raghu @ Amarjit accused of the charge against them. However, the remaining accused who are the appellants, were convicted and sentenced, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

The case in hand is that of blind murder. Deceased Suresh had purchased Scorpio vehicle bearing registration No.HR-69-5656 from PW8 Davender Singh on 13.9.2009 and used to ply the said vehicle for commercial purposes. On 16.3.2010, he wanted to further sell the Scorpio vehicle and, accordingly, he proceeded for Delhi. However, on reaching near the mosque of Chandrawal Road, the vehicle met with an accident. As the vehicle remained parked for quite some time, at the said place, ASI Tara Chand of Police Station Ambedkar Nagar, New Delhi took the same into possession under Section 102 Cr.P.C.

It is also the case of the prosecution that during investigation of the present case, accused Parmod was arrested by PW12 ASI Satbir Singh on 12.3.2010 and during his interrogation, he suffered disclosure statement Ex.PW9/A admitting his involvement in the case. On 18.3.2010, SI Satbir Singh received information that accused Amarjit @ Raghu and Saurav @ Chanchal stood arrested and they disclosed about their involvement in the present case. Accused Saurav @ Chanchal also suffered disclosure statement Ex.PW19/C to the effect that he could demarcate the place of occurrence. Pursuant to the same, he led the police party and vide memo Ex.PW19/D, demarcated the place of occurrence. On the same day, accused Devvrat @ Debu was arrested by SI Satbir Singh, who admitted his involvement in the case. He also offered to get recovered one mobile phone belonging to deceased Suresh from his residential house, besides one purse, one registration certificate of Scorpio vehicle and two photos of the deceased which he had given to Amarjit Singh @ Raghu. During his interrogation, Devvrat @ Debu also admitted his involvement in the case and disclosed that he had kept concealed one Dao which was used in the crime and his blood stained clothes lying in the almirah of his residential house. In order to prove the factum of disclosure statement Ex.PW4/A, the prosecution examined PW19 ASI Karambir Singh, PW16 SI Sethi and PW4 Naresh Kumar. However, during his cross-examination, PW4 Naresh Kumar went wayward and was, thereafter got declared hostile by the Public Prosecutor. During his cross-examination by the learned Public Prosecutor, he admitted his signatures on recovery memo Ex.PW4/D but went on to state that the same were obtained by the police on blank

papers. It may also be mentioned here that nothing was recovered pursuant to the disclosure statement Ex.PW4/A. However, PW21 ASI Satbir Singh again subjected accused Devvrat @ Debu to interrogation pursuant to which he suffered disclosure statement Ex.PW3/E and pursuant to the same got recovered Dao Ex.P1. In order to prove the second disclosure statement Ex.PW3/E, the prosecution relied upon the testimonies of PW3 Surender and PW21 ASI Satbir Singh. PW3 Surender is not a stranger to the case being brother of the deceased.

It is also the prosecution case that accused Devvrat @ Debu had suffered another disclosure statement Ex.PW3/E, pursuant to which, got recovered his woolen jarsi Ex.P2, besides his own mobile phone Ex.P3. The blood stains on woolen jarsi Ex.P2 were found to be disintegrated. PW3 Surinder, who was witness to the disclosure statement Ex.PW3/E as well as recovery memo. Ex.PW3/F is brother of the deceased. Moreover, during his cross-examination PW3 Surender also did not support the prosecution case.

Coming to the case of accused Parmod, the prosecution has come up with the version that after his arrest on 12.3.2010, he had suffered disclosure statement and in order to prove the same, it placed reliance upon the testimony of PW19 ASI Karambir Singh. However, HC Satpal, who was also a witness to the said disclosure statement was not examined by the prosecution. Further, another disclosure statement Ex.PW22/D was suffered by accused Parmod on 13.3.2010 and in order to prove the same, the prosecution relied upon the testimony of PW17 ASI Satish Kumar. Not satisfied with the second disclosure statement Ex.PW20/D, the prosecution

has tried to prove the third disclosure statement Ex.PW22/E made on 16.3.2010 and to prove the same had cited HC Rajesh. However, he was not examined and given up. Pursuant to the aforementioned disclosure statements, the prosecution claimed that countrymade pistol Ex.P9 and Scorpio vehicle were recovered. In fact, the Scorpio vehicle was initially taken into possession by the Delhi police vide DDR No.19 dated 13.3.2010 and, thereafter, on 16.3.2010, the Scorpio vehicle was handed over by the Delhi police to ASI Satbir Singh. However, as mentioned above, the independent witnesses, said to have been joined by the prosecution while recording disclosure statements made by accused Parmod had not been examined. Rather, the prosecution relied upon the testimonies of official witnesses. PW3 Surinder and PW4 Naresh Kumar, who were the witnesses to the disclosure statement made by accused Devvrat @ Debu, pursuant to which, various recoveries were made, had not supported the prosecution case in entirety. Both of them were got declared hostile and, thereafter, subjected to cross-examination by the learned Public Prosecutor.

According to the prosecution, accused Saurav @ Chanchal was arrested on 18.3.2010. During his interrogation, he had suffered three disclosure statements. First one was Ex.PW19/C made on 18.3.2010, the second one on 19.3.2010 while the third also on 19.3.2010. Pursuant to the third disclosure statement, accused Saurav @ Chanchal had got recovered Dao vide memo. Ex.PW3/D. Apart from the official witnesses produced by the prosecution, PW3 Surinder was joined by the prosecution. As mentioned above, PW3 Surinder is the brother of the deceased and in such a situation, he was interested in the cases of the prosecution and for that

reason had had stepped into the witness box as PW3. Moreover, during his cross-examination, PW3 Surinder had resiled from his version and was, accordingly, got declared hostile by the learned Public Prosecutor.

Apart from the various disclosure statements said to have been suffered by the three convicts pursuant to which the recoveries were effected, the prosecution also relied upon the admission by them of being involved in the crime followed by demarcating the place of occurrence. To the same effect was the testimony of Jitender @ Kalwa and Amarjit @ Raghu accused, who were acquitted of the charge against them. In such a situation, the prosecution case regarding disclosure statements made by the three appellants pursuant to which they had also admitted their involvement, besides demarcating the place of occurrence, cannot be used against them so as to convict them of the charge against them.

In view of the above, it cannot be said with certainty that the appellants were involved in the commission of the crime. The prosecution has failed to establish the guilt of the appellants and consequently it would be just and proper to acquit them of the charge under Section 302 IPC.

Resultantly, the appeals, i.e. CRA-D-318-DB of 2012 filed by Devvrat @ Debu, CRA-D-369-DB of 2012 filed by Parmod and CRA-D-418-dB of 2017 filed by Saurav @ Chanchal are accepted and the appellants are acquitted of the charge against them.

August 17, 2017
satish

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO