

CRA No.D-509-DB of 2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA No.D-509-DB of 2013**

DATE OF DECISION: OCTOBER 25, 2017

MOHAN @ KALA ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA No.D-693-DB of 2013**

RAJESH @ RAJU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

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

**PRESENT: MR. VIKAS BISHNOI, ADVOCATE
FOR THE APPELLANT IN CRA-D-509-DB of 2013.**

**MR. BIKRAM CHAUDHARY, ADVOCATE
FOR THE APPELLANT IN CRA-D-693-DB of 2013.**

MR. PRAVEEN BHADU, A.A.G., HARYANA.

MAHABIR SINGH SINDHU, J.

1. Appellants Mohan @ Kala and Rajesh @ Raju have filed aforestated separate criminal appeals against a common judgement of conviction dated 17.5.2013 and order of sentence dated 18.5.2013, passed by learned Addl. Sessions Judge, Rohtak vide which they were convicted under Section 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life each and to pay a fine of ₹10,000/- each and in default, to undergo a further period of RI for 3 months for committing the murder of one Ranbir s/o Ujala Ram.

2. Brief facts of the case are that deceased Ranbir was serving in CRPF and was on leave from 24.10.2008 to 28.10.2008, but on 28.10.2008 at about 5.30 a.m., he was found dead in his house. He was rushed to PGIMS, Rohtak. The doctor at PGIMS, Rohtak recorded that the patient was brought dead on 28.10.2008 at 8.50 a.m. and sent a ruqa to the police (Ex.D2). Thereafter the Police conducted the proceedings under Section 174 Cr.P.C. and took the dead body in its possession and got conducted the post mortem. The doctor who conducted the post mortem examination recorded that the cause of death would be ascertained only after receipt of reports of HPE and chemical analysis of viscera. Thereafter, the body was handed over to the heirs of the deceased and got cremated.

3. On 26.11.2008, the Forensic Science Laboratory, Madhuban Karnal sent the report after conducting chemical examination of viscera detecting Aluminum Phosphide (Celphos) in parts of stomach, small and large intestines, liver, spleen and kidneys.

4. Thereafter an application dated 31.12.2008 (Ex.PA) was moved by Shamsher Singh, brother of deceased to the police which is as under:-

“Submitted that I am Shamsher s/o Ujala Ram, caste Jat, resident of village Mokhra Kheri. We are four brothers. Eldest is Krishan, who is residing separately along-with his children. Youngest to him is Ranbir Singh who was serving in CRPF, Delhi, younger to him is myself; whereas Kuldeep is younger to me i.e. he is youngest-one, who is unmarried.

All the three brothers lived jointly along with our parents. My brother Ranbir is married with Saroj D/o Balwant Singh, Jat, r/o village Dehman district Fatehabad about 9/10 years before. He has two sons, name of his eldest son is Yogesh aged 8 years; whereas Manish is younger, whose age is 5 ½ years. My brother Ranbir had come to the house for availing leave for five days on 24.10.2008 on Diwali festival. On 27.10.2008 my brother taking his meal/dinner along-with his wife Saroj had gone to a room, where animals are tied, for sleeping. Their son Manish was also along with them. On 28.10.2008 at about 5:30 a.m. my father Ujala Ram went to him for getting him awakened. My father called him from outside and returned back. Wife of Ranbir woke up and came to the house and started to prepare tea. After preparing tea when she went to her husband for serving it, after short moment she came back and told me while weeping, what had happened to my brother. I went there and saw that my brother was lying dead on a cot. Thereafter we carried him to MCH, Rohtak. Being perplexed my brother Krishan had made a statement wrongly that his brother died due to heart attack. After some days my nephew Manish disclosed to me that on that night when his father expired, his maternal uncle (Mama) named Raju had come there. His mother had caught hold hand of his Papa, whereas Raju had caught hold his neck. He again disclosed that he did not know what kind of

object was inserted by both of them in his mouth and he had slept on a cot. We did not take his tidings seriously due to his childhood. But thereafter Manish repeated these tidings four-five times without our enquiry. One day, 15/20 days before my nephew Parvinder son of Krishan informed me that a day before the death of his uncle Ranbir, when his aunty Saroj and Manish were coming back towards their house after throwing cow dung, then one boy riding on a motor-cycle came there and he had handed over some object wrapped in a paper to Manish and Manish had delivered that pudia to aunt Saroj. I rushed there and enquired from Saroj, regarding that Pudia but she replied that the pudia contained her medicine only. So, we suspected and started to make enquiry regarding that incident and finally we came to the conclusion that death of my brother has occurred due to administering/providing some poisonous object to him by my bhabhi (brother's wife) namely Saroj and Raju of village Dehman. After making enquiry and confirmation I have come to you for lodging a report regarding this incident/murder. Legal action be taken against them.”

5. On the basis of the aforesaid statement, FIR No.310 dated 31.12.2008 under Section 302/34 IPC, Police Station Meham was registered. PW12 Inspector Prithvi Singh inspected the spot, prepared rough site plan and recorded the statements of witnesses. Accused Saroj and Rajesh were arrested and on interrogation they suffered disclosure

statements Ex.PP and Ex.PQ, respectively which were later on found to be false. Thereafter, accused Saroj again suffered a disclosure statement Ex.PR and got recovered a mobile phone (Ex.P4) and two SIM cards (Ex.P5 and P6) from her house at village Dehman from an iron box. Accused Rajesh also made disclosure statement Ex.PS and got recovered a motorcycle, a jute bag, a parna, two mobile phones and one SIM card from his house at village Dehman from an iron box wrapped in a parna. All the articles were taken into possession vide memo Ex.PB. Thereafter, accused Mohan was arrested. On interrogation, he made a disclosure statement (Ex.PT) and got recovered a mobile phone (Ex.P7) from an iron box in his house which was taken into police possession vide memo Ex.PB. Call details as well as location of mobile phone bearing SIM No.9050332414 for the period 1.8.2008 to 25.12.2008, 9992366351 for the period 20.10.2008 to 28.10.2008, 9812969284 for the period 20.10.2008 to 24.12.2008 and 28.7.2008 to 24.12.2008, 9992698311 for the period 28.7.2008 to 24.12.2008 and 26.10.2008 to 5.11.2008 and 9812878146 for the period 25.10.2008 to 30.10.2008 were procured.

6. After completion of the investigation, report under Section 173 Cr.P.C. was filed and the accused were charge-sheeted for the offence under Section 302 read with Section 34 IPC. to which they pleaded not guilty and claimed trial.

7. To prove its case, the prosecution examined as many as 13 witnesses.

8. Unfortunately, accused Saroj died during trial. Therefore, statements of accused Rajesh @ Raju and Mohan @ Kala were recorded

under Section 313 Cr.P.C. in which they pleaded innocence and claimed false implication. The accused examined DW1 to DW3 in their defence.

9. DW1 HC Bhagat Ram brought copy of FIR registered at the instance of accused Saroj Bala under Section 498-A and 406 IPC against her in-laws, i.e. Ujjalla Singh, Dhanpati wife of Ujjalla Singh, Krishan, Shamsher and Dalip, sons of Ujjalla Singh on the basis of complaint under Section 156(3) Cr.P.C.

10. The trial Court after giving its thoughtful consideration to the all the evidence available on record, convicted and sentenced the appellants as stated above.

11. Hence the present appeal.

12. Learned counsel for the appellants contended that the charges against the appellants have not been proved beyond reasonable doubt. The prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is further contended that there existed one FIR under Sections 498-A and 406 IPC against the complainant and his family members and in order to get rid of Saroj and to collect the service benefits of the deceased and his share in the property, the complainant and his family falsely implicated the appellants. Further, there is no evidence that the quantity of aluminum phosphide found in the viscera of the deceased was insufficient to cause his death. Lastly, it is contended that the trial Court has gravely erred in convicting and sentencing the appellants on the basis of statement made by a 5 years old child witness, namely Manish, PW5.

13. Learned counsel for State, on the other hand, submitted that

the prosecution has been able to prove its case against the appellants and the trial Court has rightly passed the judgement against the appellants after giving due consideration to each and every aspect of the case.

14. The case of the prosecution primarily rests on the statement of PW5, namely, Manish son of Ranbir Singh (deceased), aged 6 years. PW5 gave a graphic account of the occurrence and deposed that his mother (since expired) caught hold of his father (deceased), convict-appellant Raju strangled the deceased, convict-appellant Mohan caught the legs of the deceased and his mother (since dead) held the hands of the deceased, convict-appellant Raju gave a fist blow in the abdomen of the deceased and thereafter, convict-appellant Raju had taken out a tablet from a packet, brought by him and put the same in the mouth of the deceased. Thereafter PW5 alongwith his mother (since dead) had gone for a sleep and convict-appellants Raju and Mohan left the place of occurrence.

15. PW4 Parvinder who is the son of deceased's brother Krishan testified the aforesaid deposition made by PW5 in his statement before the Court. He deposed that on 27.10.2008 at about 5.00 p.m., he was standing in front of his house. In the meantime, Saroj (accused-since died) alongwith PW5 came there for placing the dung. Thereafter he saw convict-appellant Raju on a motorcycle handing over a packet (puria) to PW5 Manish and PW5 handed over the same to Saroj (accused-since died). On his asking about the contents of said packet, Saroj (accused-since died) replied that it was her medicine.

16. PW7 Shri Atul Marya, Sub Divisional Judicial Magistrate,

Meham was also one of the witness from the prosecution side. PW7 deposed that on 2.1.2009, the police moved an application (Ex.PK) before him to record the statement of PW5 Manish. Taking into consideration the tender age of PW5, PW7 interacted with him in order to ascertain his fitness and mental capability to make a statement. Only after having satisfied fully that PW5 was fit to make statement, his statement was recorded which was without any influence or pressure.

17. PW11 Dr. Vikas, Medical Officer, CHC, Kiloï conducted the post mortem examination on the dead body of Ranbir on 28.10.2008 at 1.30 p.m. and found the following injuries:-

- “1. There were present 3 abrasions of size 2 x 1 cm – 5 cm below left angle mandible. Deep tissues were normal and healthy.*
- ii) Multiple abrasions were present over left knee joint.*
- iii) Abrasion of size 2 x 1 cm – 8 cm below right knee joint.”*

PW11 opined that the cause of death could be ascertained only after receiving the report of HPE and chemical analysis of viscera. PW11, on receipt of below mentioned FSL report dated 26.11.2008, (Ex.P1) vide which Aluminum Phosphide (Celphos) was detected in parts of stomach, parts of small and large intestines, liver, spleen and kidneys, opined the cause of death of deceased due to Organophosphate poisoning (Aluminum Phosphate) (wrongly spelled as 'Phosphate' instead of 'Phosphide', as per FSL report) .

- “1. Aluminum phosphide (celphos) was detected in*

exhibits-1a and 1b.

2. *No common poison could be detected in exhibit 1-c.*

18. PW13 S.I. Sada Nand deposed that on 25.12.2008, he was posted as Incharge, Cyber Crime, Rohtak. He collected the call details and location of mobile phones bearing SIM No.9050332414 for the period 1.8.2008 to 25.12.2008, 9992366351 belonging to accused Rajesh for the period 20.10.2008 to 28.10.2008, 9812969284 used by Saroj for the period 20.10.2008 to 24.12.2008 and 28.7.2008 to 24.12.2008, 9992698311 used by accused Rajesh for the period 28.7.2008 to 24.12.2008 and 26.10.2008 to 5.11.2008 and 9812878146 belonging to accused Mohan for the period 25.10.2008 to 30.10.2008.

19. PW5 Manish had categorically spoken about the events that happened on the fateful night. PW7 Sh. Atul Marya, SDJM, Meham has deposed that after satisfying himself fully that PW5 being a child witness was able to make statement, recorded his statement, which was without any influence or pressure. The questions asked by PW7 to PW5 Manish were logically answered. PW5 Manish had further been cross-examined at length. But the defence had not been able to shake his evidence. Therefore, the evidence of PW5 Manish could safely be relied upon for recording conviction against the accused-appellants.

20. The sequence of events explained by PW5 Manish have further been corroborated by the medical evidence which has come on record through post mortem examination and the FSL report. PW11 Dr. Vikas had noted down abrasions on mandible and left and right knees. The FSL report revealed that Ranbir died due to poison and Aluminum

Phosphide was found in his body parts sent for examination. PW5 Manish had spoken in his deposition that on the fateful night while accused Saroj (since died) caught hold the hands of deceased Ranbir and accused-appellant Mohan caught hold of the legs of deceased Ranbir, accused-appellant Raju after giving a fist blow in the abdomen of Ranbir took out a tablet from a packet and put the same in the mouth of Ranbir and went away. Therefore, the medical evidence also goes hand in hand with the statement made by PW5.

21. Unfortunately, accused Saroj died during the pendency of the trial. Therefore, as far as motive part is concerned, the same goes with the death of key accused. Saroj (since died) was the best person to be examined to carve out the motive about the occurrence. Since, she expired during the trial, so is the motive.

22. PW13 S.I. Sada Nand come with the call records (Ex.PU) and location of the SIM cards of the convict-appellants procured at their instance through disclosure statements which clearly proves that the accused were very much in the vicinity of the place of occurrence, i.e. Village Mohkra and were regularly in touch with each other.

23. A vague argument was made by learned counsel for the appellants that the quantity of Aluminum Phosphide found in the body of deceased Ranbir was not sufficient to cause his death. It has come in the FSL report that Aluminum Phosphide (Celphos) was detected from the body parts of the deceased sent for examination. PW11 also opined that the death occurred due to Organophosphate poisoning (Aluminum Phosphate) (wrongly spelled as 'Phosphate' instead of 'Phosphide', as per

FSL report) which duly corroborates with the statement made by PW4 Parvinder that he had seen appellant Raju handing over a packet to Manish and Manish handing over the same to Saroj (since died). PW5 also had spoken about the packet from which a tablet was put in the mouth of Ranbir.

24. In view of the aforesaid chain of circumstances and the evidence available on record, it can be safely concluded that it were the appellants who committed the murder of Ranbir. We find no substance to differ with the well considered judgement passed by learned trial Court.

25. In view of the above, the judgement of conviction and sentenced passed by the trial Court stands confirmed and the appeals stand dismissed.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 25, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes