

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

CRA-D-280-DB of 2003

Decided on : February 28, 2017

Ajit Singh

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr. Raj Kumar Gupta, Advocate
for the appellant.

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

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 4.2.2003 vide which learned Additional Sessions Judge (Ad hoc), Jhajjar had convicted accused Ajit Singh under Sections 302/34 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for six months.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction and sentence be set aside and he be acquitted of the charge framed against him.

In nutshell, the prosecution story is that complainant – Azad Singh son of Sohan Lal of Yadav community, resident of Kheri

Khumaar, aged about 45 years, an Ex-serviceman, engaged in avocation of agriculture along with his younger brother Surender Singh, aged about 38 years had installed a sugarcane crusher. They had employed Subhash son of Kundan Chulia, resident of Assan Kalan, District Panipat as a driver on their tractor. On 31.1.1997, Surender Singh was taken by Subhash with him stating that *pakawas* (persons who prepare jaggery) were available with his sister's husband Babu Ram, resident of Khera Kultan, Police Station Kandla, District Muzaffarnagar (U.P.) and Surender Singh should go with him along with money. Accordingly, Surender Singh accompanied Subhash. At that time, Surender Singh was having Rs.20,000/- with him. However, neither Surender Singh returned home nor anything was heard about Subhash. Complainant Azad Singh launched a search for his brother but to no effect. He lodged information on 14.2.1997 with the police of Police Station Jhajjar that his brother Surender Singh was not traceable. Thereafter, he informed the police of Police Station Jhajjar on 17.2.1997 that he had a doubt that Subhash driver had taken away his brother in order to kill him out of greed for money. A police party headed by SI Sat Narain (hereinafter referred to as Investigating Officer/IO) was present at village Kheri Khumaar in connection with patrolling and excise checking, the said police officer recorded statement Ex.PA of Azad Singh – complainant. He appended his endorsement Ex.PA/1 below such statement and sent ruqa to the police station, on the basis of which formal FIR Ex.PA/2 was recorded by HC Satbir Singh at Police Station Jhajjar.

On 20.2.1997 SI Sat Narain went to the Police Station

Kandla (U.P.) where clothes of dead body were available. Those clothes were identified to be those of Surender Singh by his brother Mahender Singh and cousin Sham Singh. SI Sat Narain prepared a parcel of those clothes sealing it with his seal bearing impression 'SN' and the said parcel was taken into possession vide memo Ex.PG attested by HC Surender Pal Singh and Mohinder Singh. The inquest papers regarding dead body of Surender Singh which had been prepared by police of Police Station Kandla were taken into possession by SI Sat Narain. On 19.5.1997, the IO took Sumit Kumar, Constable/Draughtsman to village Khera Kultan, P.S. Kandla (village of accused Babu Ram), who prepared site-plan of house of Ajit Singh where murder of Surender Singh had allegedly taken place, the said site-plan being Ex.PB. Thereafter, Sumit Kumar, Draughtsman was taken to the place at canal in the area of village Isapur, where the dead body was allegedly thrown and he prepared the site-plan of that place as Ex.PC. During the course of investigation, accused Ajit Singh and Babu Ram were arrested whereas accused Subhash had committed suicide.

After completion of investigation and other formalities, challan against Ajit Singh and Babu Ram accused was prepared and filed in the Court of Sub-Divisional Judicial Magistrate, Jhajjar.

On presentation of challan in the Court of Sub-Divisional Judicial Magistrate, Jhajjar, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Sub-Divisional Judicial Magistrate,

Jhajjar vide his order dated 7.7.1997 committed the case to the Court of Sessions Judge, Rohtak, from where it was entrusted to the Court of learned Additional Sessions Judge (Ad hoc), Jhajjar.

Finding that prima-facie offences under Sections 364/302 read with Section 34 and 201 of the Indian Penal Code were disclosed against Ajit Singh and Babu Ram accused, both the accused were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

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

PW1 - HC Satbir Singh
PW2 - Constable Sumit Kumar
PW3 - Sham Singh
PW4 - Dr.Narender Kumar
PW5 - Azad Singh
PW6 - Yusuf Ali
PW7 - Ram Kishan
PW8 - Mahender Singh
PW9 - Smt.Kailash
PW10 - Sahbu
PW11 - Parkash
PW12 - DSP Prem Singh
PW13 - SI Sat Narain

With that the evidence of prosecution stood closed.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted both the accused for offence under Section 302/34 IPC sentencing them to undergo imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months, which left them aggrieved and Ajit Singh and Babu Ram filed separate appeals challenging the judgment of their conviction and sentence. Further, since Babu Ram expired during pendency of the appeal, the said CRA-D-301-DB of 2003 has been disposed of as having become infructuous. Now we are left with appeal filed by accused-convict-appellant - Ajit Singh.

We have heard learned counsel for the appellant-accused-convict – Ajit Singh and learned Assistant Advocate General for the State of Haryana besides going through the record and we are of the view that the impugned judgment of conviction and sentence passed against Ajit Singh is not sustainable and is liable to be set aside by way of acceptance of appeal. The reasons for our arriving at such conclusion are as follows:

This is a case based upon circumstantial evidence and there is no direct evidence of the incident. The law is well settled that when a case is based upon circumstantial evidence, the chain of evidence/events in that eventuality must be complete and if any link is missing in the

chain then it cannot result in conviction of the accused. Here in the present case, many vital links in the chain are missing and prosecution failed in its endeavour to prove its charge against the accused beyond the shadow of reasonable doubt. Of the PWs examined by the prosecution. PW1 happened to be HC Satbir Singh. He is more or less a formal witness since he on 17.2.1997 while posted as HC at Police Station Jhajjar on receipt of ruqa Ex.PA with endorsement of police officer Ex.PA/1 had recorded formal FIR Ex.PA/2 and had returned the ruqa after making endorsement Ex.PA/3 thereon.

Similarly, testimony of PW2 Sumit Kumar, Constable/Draughtsman is not directly incriminating against the accused since on 19.5.1997, he after visiting the place of occurrence had prepared the scaled site-plan Ex.PB, as pointed out by PW Sahbu and on the same day after going to place of recovery of dead body had prepared site-plan Ex.PC as pointed out by Vijay Pal PW. He did not utter even a single word against the appellant-accused – Ajit Singh .

PW3 Sham Singh, a cousin brother of Surender Singh deceased stated that on 20.2.1997, he had gone to Police Station Kandla (U.P.) and identified clothes in the form of *kurta*, *pyjama*, a vest and underwear besides a pair of socks to be those of Surender Singh and a memo of identification in that respect Ex.PG was prepared. Testimony of this witness is more or less corroborative in nature and is not directly inculpatory qua the appellant.

Coming to statement of PW4 Dr. Narender Kumar who on 12.2.1997 had conducted post-mortem examination on the dead body of

an unknown male (identified from the clothes to be Surender Singh) deposed that it was dead body of a male aged 45 years, rigor mortis was absent all over the body. Ribs 4 to 8 were separated from the sternum on left side as they were notched away by wild animals. Several vital organs were missing having been eaten away by wild animals. He further deposed that there was one ante-mortem injury i.e. incised wound 11 cm x cutting through and through trachaea and oesophagus and body of fifth cervical vertebra. The lower part of the wound was absent as notched by the wild animals and that wound was situated at upper part of neck extending on both sides, 12 cm below the chin. He stated that cause of death in his opinion was shock and haemorrhage as a result of ante-mortem injury which was sufficient to cause death in ordinary course of nature. He gave probable duration between death and post-mortem as about two days, proving copy of the post-mortem report Ex.PH.

Again, deposition of this witness is of corroborative and supportive nature only. From his testimony at best it can be taken that the deceased had died an unnatural death due to incised wound through and through trachaea and oesophagus etc. but the important thing is as to who had caused that injury. Evidence in that regard is clearly missing in this case.

Coming to statement of PW5 Azad Singh – complainant, he toed his version as given to the police stating that Surender Singh had accompanied accused Subhash (since deceased) to village Khera Kultan (U.P.). From his testimony, it does not come out that Subhash had

kidnapped or abducted Surender Singh having an intention to murder him so as to grab ₹20,000/- which he was carrying. Rather it comes from his testimony that Surender Singh had accompanied Subhash of his own just to find trained labour for preparing jaggery. In any case Subhash has since died. Since no evidence is available on the file and the circumstances also do not indicate so it cannot be inferred that Ajit Singh accused was part of conspiracy for kidnapping/abduction of Surender Singh, that too for the purpose of his murder. Although this witness in the concluding line of his examination-in-chief stated that later on he came to know Surender Singh had been murdered by the accused but then this bald assertion does not have any value since he nowhere claimed to be an eye-witness of alleged murder of Surender Singh at the hands of Ajit Singh accused.

Coming to statement of PW6 Yusuf Ali, Ex-Sarpanch of village Kheri Gujar (U.P.), a witness cited by the prosecution to show that Ajit Singh etc. had come to him and made extra-judicial confession regarding causing death of Surender Singh. If his testimony is scanned minutely, it comes out that it does not relate to Ajit Singh making any extra-judicial confession before him as regards his committing murder of Surender Singh. Rather he stated that in April, 1997 accused Ajit Singh accompanied by 4-5 other people of village Khera Kultan came to him and told that one person from village Kheri Khumaar had come to Khera Kultan and they all took liquor and that man died. The witness further stated that Ajit and his companions made request that he should produce them before the police and he had accordingly produced Ajit

Singh accused before the police on 13.4.1997. This witness no where stated that Ajit Singh - accused had confessed before him that he (Ajit Singh) had committed murder of that person, much less by name of Surender Singh. Rather the cause of death of that man does not come out to be clear on the record. It can certainly be not taken to be an extra-judicial confession by Ajit Singh regarding his committing murder of Surender Singh.

Coming to statement of PW7 Ram Kishan, he stated that on 3.2.1997, he had gone to Police Station Jhajjar where accused Babu Ram was interrogated who told in his presence that his wife's brother Subhash along with another person namely Surender Singh had come to village Khera Kultan and both of them had gone to the house of Ajit Singh where they took liquor and Ajit Singh came to Babu Ram at about 9:00 p.m. telling that he had completed the job assigned by him and dead body of man, who had come from Haryana was lying in the house of Ajit Singh and thereupon Babu Ram, Subhash, Ajit Singh and Brahm carried dead body in a *buggi* and threw it in canal. He proved disclosure statement of Babu Ram as Ex.PK stating that then they along with Babu Ram went to village Khera Kultan, where Babu Ram led the police party to house of Ajit Singh where dead body was placed after murder and in that regard, recovery memo Ex.PL was prepared and Babu Ram had also led the police party to the canal and pin pointed the place where the dead body had been thrown. Another memo in that connection was prepared as Ex.PM and all the memos were signed by him. Testimony of this witness does not carry much weight because as per his deposition, the

confession was made by Babu Ram during his interrogation by the police at Police Station Jhajjar which is clearly hit by Section 25 of the Evidence Act being statement made to a police officer while in police custody and the same is inadmissible in evidence. It can certainly be not taken into view much less considered as incriminating evidence against Ajit Singh. There is no evidence to show that dead body of Surender Singh was recovered from the house of Ajit Singh. No recovery is said to have been effected in pursuance of that statement Ex.PK. Therefore, this statement of this witness does not help the prosecution in advancing its case.

Coming to statement of PW8 Mahender Singh, brother of deceased, who had identified the clothes being Ex.P1 to Ex.P6 available at Police Station Kandla on 20.2.1997 to be those of his brother Surender Singh. Again, testimony of this witness is not directly incriminating against the appellant-accused. It needs to be mentioned here that the police of Police Station Kandla on recovery of the dead body on 11.2.1997 from dry canal of village Isapur stated to have got the dead body photographed but those photographs are not part of the challan. The dead body could have been identified from such photographs. PW4 Dr. Narender Kumar in his cross-examination has stated that the body was identifiable. No serious attempt is shown to have been made by the police of Police Station Kheri Kultan to publish the photographs so as to find out the identity of the dead body. The police of said police station got satisfied after getting the post-mortem examination conducted on the dead body which under the circumstances

was not enough action on its part.

As regards testimony of PW9 Smt.Kailash wife of deceased, she deposed that Subhash had been working as driver on their tractor and about three years back, he took her husband with him on the pretext that *pakawas* were to be brought from Sultanpur, U.P. State. Subhash took him to accused Babu Ram and while leaving home Surender Singh carried ₹20,000/- with him. However, Surender Singh did not return thereafter and he was murdered by accused. From her cross-examination, it comes out that she does not have personal knowledge regarding Subhash taking Surender Singh to Babu Ram as stated by her in her examination-in-chief. She does not have any personal knowledge regarding the incident resulting in murder of her husband. Therefore, her testimony is not of much value.

PW10 Sahbu and PW11 Parkash cited by the prosecution as the witnesses who had seen Babu Ram and Subhash taking Surender Singh under influence of liquor in a *buggi* of Ajit Singh accused did not support the prosecution story and they were declared hostile witnesses at the instance of Public Prosecutor. Therefore, their depositions do not help the prosecution much.

PW12 Prem Singh, D.S.P., Jhajjar, who had carried out the investigation deposed regarding Babu Lal – accused suffering a disclosure statement Ex.PK and pointing out house of Ajit Singh where dead body was lying besides demarcating the place where they had thrown the dead body besides Ajit Singh accused having been produced before him along with *jhota buggi*, Ajit Singh being arrested and *jhota*

buggi taken into possession. Further, his testimony is not much convincing and does not prove that Ajit Singh was part of any conspiracy to commit murder of Surender Singh.

PW13 SI Sat Narain had simply carried out investigation in this case. He does not claim any personal knowledge regarding the incident.

Therefore, we find that the judgment of conviction and sentence passed by the trial Court against Ajit Singh - accused-convict-appellant suffers from infirmities and illegalities and is result of misappraisal of evidence and wrong interpretation of law, the same is not sustainable and is liable to be set aside by way of acceptance of appeal.

Resultantly, appeal filed by Ajit Singh – accused – convict – appellant is allowed and the judgment and sentence passed against him is set aside, consequently, he is acquitted of the charges framed against him. He is on bail. Bonds and sureties furnished by him are discharged.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
28.2.2017		
Brij		

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No