

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

CRA-D-650-DB-2003

Date of decision: 31.05.2017

Dinesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Inderjeet Singh, Advocate
for the appellant.

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

H.S. MADAAN, J.

This appeal has been preferred against judgment of conviction and sentence dated 11.07.2003 passed by the Court of learned Additional Sessions Judge, Jagadhri vide which he had convicted accused Dinesh Kumar alongwith accused Mange Ram (since dead, separate appeal filed by him, abated vide order dated 11.05.2017) sentencing them

as follows:-

- i. Rigorous imprisonment for life for the offence under Section 302 read with Section 34 of the Indian Penal Code (“IPC”- for short);
- ii. Rigorous imprisonment for five years for the offence under Section 364 read with Section 34 IPC;
- iii. Rigorous imprisonment for seven years for the offence under Section 392 read with Section 34 IPC;
- iv. Rigorous imprisonment for five years for the offence under Section 394 read with Section 34 IPC; and
- v. Rigorous imprisonment for two years for the offence under Section 201 read with Section 34 IPC.

All the sentences were ordered to run concurrently.

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

Briefly summed up, the prosecution story is that complainant-Harbans Singh son of Uttam Singh, resident of Dhimo, Police Station Chhachhrauli, aged about 45 years, went to Police Station, Buria on 11.05.2000 and got his statement Ex.PO recorded with SI Lachhman Singh, SHO of the said Police Station (hereinafter referred to as the Investigating Officer/I.O.). *Inter alia* he stated that he is an agriculturist by avocation; that he had brother namely Gurmail Singh and they had

been living jointly. On 08.05.2000 Gurmail Singh had gone to meet their sister Harbans Kaur wife of Mohinder Singh, resident of village Dadupur on his tractor bearing No.HRE-5938, make Ford 3600. According to his sister's husband (Jija) Mohinder Singh, Gurmail Singh had started return journey for home on the same day at about 5:30 p.m., but Gurmail Singh had not reached home on that day. The complainant alongwith Jaswant Singh, while searching Gurmail Singh had reached village Dadupur where at about 10 a.m. Karanjit Singh son of Jagjit Singh resident of Dhimo met them at petrol pump of village Dadupur and on asking he told them that Gurmail Singh was driving Tractor, whereas two boys namely Mange Ram son of Jai Pal resident of Bhool Kheri and Dinesh @ Kala son of Kesho Ram Sharma resident of Nandgarh were sitting on both sides of the tractor and he had seen them while going in front of petrol pump towards Dadupur side at about 9 p.m. on 08.05.2000; that they accordingly, went to the residential houses of both the boys at their respective villages, but they were found missing from their respective houses since 08.05.2000.

Inter alia in the complaint the complainant stated that both the boys were vagabonds and carrying bad reputation and that his brother had been kidnapped by those two boys with intention to kill him out of greed for the tractor and necessary action be taken against them. That statement was signed by Harbans Singh-complainant and his signatures in Hindi were attested by SI/SHO Lachhman Singh. The Investigating Officer found that from the statement, offence under Section 364 IPC was disclosed, as such, FIR No.30 dated 11.05.2000 for offence punishable under Section

364 IPC Ex.PO was registered at Police Station, Buria. Copies of the FIR and special reports were sent to Illaqa Magistrate and senior police officers.

A police party headed by SI/SHO Lachhman Singh alongwith complainant proceeded towards Nandgarh, Dadupur, Bhool Kheri and Dadupur Head. On reaching Dadupur, the Investigating Officer recorded statement of Mahinder Singh under Section 161 Cr.P.C.. Then the police party proceeded towards Dadupur Head, where statements of Karanjit Singh, Jaswant Singh and Harjinder Singh were recorded.

On 12.05.2000 Harbans Singh-complainant informed the Investigating Officer that dead body of deceased-Gurmail Singh had been taken out from canal near Dadupur Head, which was lying on bank of that canal. The Investigating Officer alongwith police officials went to that place, he summoned a photographer who clicked photographs of dead body. The Investigating Officer carried out inquest proceedings with regard to dead body preparing report Ex.PJ. He sent the dead body to General Hospital, Jagadhri for the purpose of getting post-mortem examination conducted thereon handing over written request Ex.PK in that regard to Constable Baljit who was deputed for that job. The Investigating Officer prepared rough site plan of place from where dead body of Gurmail Singh had been recovered and was lying as Ex.PY.

Mange Ram-accused was arrested in this case on that very day. He was interrogated, during the course of which he suffered a disclosure statement Ex.PB to the effect that his slippers and those of his

co-accused Dinesh Kumar as well as of deceased Gurmail Singh, besides, burnt hair of beard of deceased Gurmail Singh were lying at the place of commission of offence near the fields of one Ishwar Singh within area of village Bhoolkheri, about which he knew and could get the same recovered. In the meanwhile, after post-mortem examination the police official deputed for the purpose namely C.Baljit produced before the Investigating Officer a parcel containing clothes of deceased, which was taken into possession vide memo Ex.PZ.

On 13.05.2000 Mange Ram-accused while in police custody led the police party to the disclosed place and got his slippers Ex.P28 and Ex.P29, those of accused-Dinesh Kumar Ex.P30 and Ex.P31, besides Jutti (footwear of deceased) Ex.P27 and burnt hair of the beard of deceased, recovered. A leaf of Pipal tree stained with blood was also lying there. All those articles were converted into separate parcels which were sealed with seal having impression "RS". Those were seized vide memo Ex.PQ, a memo regarding identification of place of occurrence at the instance of accused Ex.PS was drawn, so was rough site plan of place of recovery of those articles Ex.PAA.

Thereafter, Mange Ram-accused, while in police custody took police party to the place from where dead body of Gurmail Singh was thrown into the canal. The Investigating Office prepared a memo in that regard as Ex.PR. From that place also burnt hair of the deceased were recovered which were taken into possession vide memo Ex.PT, rough site plan of that place Ex.PBB was drawn. Jutti (Footwear) Ex.P27 was

identified by Harbans Singh and Harjinder Singh as belonging to the deceased.

On 14.05.2000 the police party went to the place where tractor had been abandoned by accused after commission of the offence. Accused-Mange Ram had led the police party to that place, memo in that respect was prepared as Ex.PD. On arrival at that place the police party came to know that tractor had been taken away by the police of Police Station Rampur, District Saharanpur. However, the Investigating Officer prepared rough site plan of that place, where tractor had been abandoned as Ex.PCC. Then the Investigating Officer went to Police Station, Rampur from where tractor No.HRE-5938 make Ford was taken into possession vide memo Ex.PDD. On the same day, Dinesh Kumar accused was arrested from village Nandgarh. He was also interrogated, during the course of which he suffered disclosure statement Ex.PC disclosing the same facts which had been told by his co-accused Mange Ram. However, he had further disclosed in his statement that he had kept concealed wrist watch of deceased Ex.P23 and currency notes amounting to ₹250/- belonging to the deceased which comprised of two currency notes of denomination of ₹100/- and one note of denomination of ₹50/- wrapped in the Parna (piece of cloth) of the deceased in his residential house under the heap of stones and he offered to get those articles recovered from there.

On 15.05.2000 accused-Dinesh Kumar while in police custody took the police party to the place where crime was committed. A

memo in that regard Ex.PU was prepared. Thereafter, he led the police party to the canal where dead body of Gurmail Singh was thrown, a memo in that regard Ex.PV was prepared. Thereafter, accused-Dinesh Kumar led the police party to his house from where he got recovered wrist watch Ex.P23, currency notes Ex.P24 to Ex.P26 wrapped in Parna Ex.P22 from the disclosed place. Harbans Singh and Harjinder Singh, PWs, accompanying the police party identified those articles and money belonging to the deceased, as such, those articles and currency notes were taken into possession vide memo Ex.PX after converting those into sealed parcels. Rough site plan of place of occurrence was prepared as Ex.PEE. Name of deceased was embroidered on the Parna Ex.P22. The Investigating Officer recorded statements of witnesses. During the course of investigation, Sh. Sardool Singh, owner of the tractor produced registration certificate of that tractor which was seized vide memo Ex.PF.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Jagadhri. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Sections 364 & 302 IPC are exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Jagadhri committed the case to the Court of learned Additional Sessions Judge (I), Jagadhri vide his order dated 14.06.2000.

On receipt of the challan, finding a prima facie case, charge

for the offences under Sections 364, 302, 392, 394, 201 read with Section 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twelve witnesses as per details below:-

PW-1 Mohinder Singh son of Partap Singh, aged about 54 years, Ex-serviceman resident of Dadupur deposed that Gurmail Singh-deceased was his brother-in-law, who had come to him on 08.05.2000 on tractor No.HRE-5938 at about 2 p.m. and he returned back at 5.30 p.m. on the same day. He further stated that from his residence Gurmail Singh had left towards Dadupur Head and he had not seen him alive thereafter.

PW-2 Vir Pal Singh stated that on 10.05.2000 while he was posted as MHC at Police Station, Rampur, District Saharanpur, a tractor bearing No.HRE-5938 was brought from forest of Kallarpur by HC Sehnsar Pal Sharma and Report No.39 in that connection was lodged with the Police Station, Rampur, District Saharanpur copy of which being Ex.PA. This witness further stated that on 14.05.2000, SHO Lachhman Singh of Police Station Buria, District Yamuna Nagar had visited their police station and requested for taking the tractor in question in possession, as such, the tractor was handed over to SHO Lachhman Singh alongwith copy of DDR No.39 Ex.PA.

PW-3 Raghbir Singh, who on 12.05.2000 was a member of the police party headed by ASI Ishwar Singh, which had arrested Mange

Ram-accused deposed regarding Mange Ram suffering a disclosure statement Ex.PB and recovery of tractor from Police Station, Rampur on 14.05.2000. He further deposed regarding Dinesh Kumar-accused making disclosure statement before the Investigating Officer on 14.05.2000 and pointing out and demarcating relevant places.

PW-4 Dr. Sumesh Garg, Medical Officer, Civil Hospital, Jagadhri, who on 12.05.2000 along with Dr. Ashok Kumar Sharma had conducted the post-mortem on the dead body of Gurmail Singh-deceased stated that their observations were as follows:-

The length of the body was 6' x 2". There was ligature mark of size 53 cm x 8 cm, present around the neck over thyroid and hyoid cartilage. The base of the ligature mark was hard, pale and parchment like. The margins of the ligature mark were red and congested. On dissection, the subcutaneous tissue was white and glistening. Body was swollen and skin was peeled off at many places. Eyes were closed. It was wearing light coca-cola kurta, pajama, white metallic kara on right wrist. Scalp, skull and vertebrae, spinal cord, walls, ribs and cartilages, peritoneum bladder, no abnormality was found. Tongue was swollen, dark red colour, congested, bitten between teeth, red colour forth was coming out from mouth and nostrils. Post mortem staining were present all over the body except neck, clothes and whole body was wet. Clothes were stained with mud and sand. Rigor mortis was present in all the four limbs but it was absent in the neck. Pleura, larynx and trachea, right lung and left lung, pericardium, liver spleen, kidney, were congested. Heart left chamber was

empty and right was containing little blood. Stomach contains 20 ml of gastric juices. Small intestine and their contents contain gases. Large intestine and their contents contained hard faeces. The organ of generation, penis and scrotum were swollen and it was shining in colour.

The cause of death in their opinion was due to asphyxia because of strangulation that was ante-mortem in nature, and sufficient to cause death in normal course of events. He proved copy of the postmortem report Ex.PH. He further stated that they had handed over to the police well sutured dead body, copy of PMR, and parcel containing clothes which were worn by the deceased. He proved the inquest report Ex.PJ. He stated that the probable duration between injury and death was within few minutes and between death and post mortem more than 48 hours. A sealed parcel was opened in the Court and the witness identified the same stating that those were same clothes which the deceased was wearing at the time of conducting post mortem.

PW-5 Sardool Singh son of Sh. Raghbir Singh, aged about 61 years, agriculturist stated that he is registered owner of tractor bearing No.HRE-5938 make Ford and on 05.05.2000 Gurmail Singh-deceased, who was his uncle in relation had borrowed his tractor for cultivation of his land; that Gurmail Singh did not return back. He proved registration certificate of the tractor as Ex.P3 stating that later on he had taken the tractor on Superdari from the Court.

PW-6 Jagpal Patwari, Halqa Jaidar, Tehsil Chhachhrauli stated that on 29.05.2000 he had prepared site plans Ex.PL and Ex.PM at

the instance of SHO and Harjinder Singh and those are true as per spot.

PW-7 Sarvesh Kumar, a formal witness tendered in evidence his affidavit Ex.PN requesting that it be read as part of his statement.

PW-8 C. Rattan Singh deposed that on 11.05.2000 he was posted at Police Station, Buria and on that day he took special reports of this case delivering the same to Illaqa Magistrate, SP as well as DSP, Jagadhri. Going further the witness deposed that on 17.05.2000, MHC Sarvesh Kumar had handed over to him two parcels, which he had deposited with FSL, Madhuban on the same day vide RC No.34; that he had not tampered with such parcels till those remained in custody and on return to the police station had produced the receipt before the MHC.

PW-9 Ashok Kumar, Proprietor Shiv Studio, Buria Chowk Jagadhri deposed that on 12.05.2000, he took photographs of deceased-Gurmail Singh at the asking of the police. He proved such photographs Ex.P4 to Ex.P8 and their negatives Ex.P9 to Ex.P13. This witness further added that on 13.05.2000 he had taken photographs Ex.P14 to Ex.P17, the negatives of which being Ex.P18 to Ex.P21 and that he had developed the photographs, which are duly stamped.

PW-10 Karanjit Singh son of Jagjit Singh, aged about 42 years, agriculturist, resident of V.Dhimo deposed that on 08.05.2000 at about 7 p.m., while he was present at petrol pump at Dadupur, he had observed Gurmail Singh driving tractor No.HRE-5938 with accused Mange Ram and Dinesh Kumar sitting on its mudguard and the tractor was going towards Dadupur Head. The witness stated that Gurmail Singh

was previously known to him being resident of his village; that on 11.05.2000, when he had gone to petrol pump for getting diesel filled in tractor, there Harbans Singh and Jaswant Singh came on a motorcycle and enquired about Gurmail Singh stating that he was missing from the village since last two days. He told them that Gurmail Singh was going on a tractor with Mange Ram and Dinesh Kumar accused on 08.05.2000.

PW-11 Harbans Singh-complainant supported the prosecution story on material aspects.

PW-12 SI/SHO Lachhman Singh who had carried out investigation in this case deposed regarding the same proving various documents.

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 the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

Accused did not lead any evidence in defence despite an opportunity being given to them for that purpose.

After hearing arguments, learned trial Court convicted and sentenced the accused/appellants, which left them aggrieved and they had filed separate appeals.

However, accused/appellant-Mange Ram had expired on 24.10.2004 during the pendency of the appeal, as such, his appeal stood abated vide order dated 11.05.2017. In that way only criminal liability of

accused/appellant-Dinesh Kumar is to be adjudicated upon in the present case.

We have heard learned counsel for the appellant/accused-convict and learned Assistant Advocate General, Haryana, besides, going through the record and we find that there is no merit in the appeal.

In the present case, direct evidence of the incident is not available, rather it is based upon circumstantial evidence. But then the chain of the events is complete leading to the irresistible conclusion that it was accused-convict/Dinesh Kumar who alongwith his co-accused Mange Ram while sharing a common intention had abducted Gurmail Singh on 08.05.2000 in area of Dadupur, Police Station Buria with an intention to murder him and both of them had in fact committed his murder and had committed robbery of tractor No.HRE-5938, which was in possession of Gurmail Singh-deceased, though it belonged to Sardool Singh and further the two of them voluntarily caused hurt to Gurmail Singh, while committing robbery and they caused evidence of their crime to disappear by concealing dead body of Gurmail Singh by throwing it in a canal with intention to screen themselves from the legal punishment.

A very strong and important piece of incriminating circumstance against the accused-convict is that he alongwith Mange Ram was last seen in the company of the deceased. There is testimony of PW-10 Karanjit Singh in that regard, who claims to have seen Gurmail Singh driving tractor No.HRE-5938 going towards Dadupur Head with accused Mange Ram and Dinesh Kumar sitting on the mudguard of that tractor.

From statement of PW-1 Mohinder Singh, brother-in-law of Gurmail-deceased it comes out that Gurmail Singh had come to meet them on 08.05.2000 on tractor No.HRE-5938 at about 2:00 p.m. and he had returned on the same day at about 5:30 p.m. and according to this witness he had not seen him alive thereafter.

According to PW-4 Dr. Sumesh Garg, who alongwith Dr. Ashok Kumar Sharma had conducted post-mortem examination on dead body of Gurmail Singh on 12.05.2000, the probable duration between injuries and death was within minutes and between death & post-mortem more than 48 hours. Thus, it comes out that Gurmail Singh was murdered by accused-Mange Ram and Dinesh Kumar on 08.05.2000. The testimony of PW-10 Karanjit Singh is natural and probable inspiring confidence. He had no reason to depose falsely against the accused, therefore, his deposition is quite important and effective to be taken into consideration while determining criminal liability of the accused-convict.

Another factor to be considered is that on 12.05.2000 accused Mange Ram had been arrested in this case and he was interrogated by the Investigating Officer during the course of which he confessed his involvement in this case by causing death of Gurmail Singh by strangulation on 08.05.2000, then taking away dead body of Gurmail Singh on the lift of the tractor towards village Ishmail Pur and throwing the dead body in a canal; thereafter, taking the tractor towards U.P. in area of Kalarpur and abandoning the tractor there out of the fear since sun had arisen. On 14.05.2000 Dinesh Kumar had also suffered a disclosure

statement to the similar effect and on 14.05.2000 Mange Ram while in police custody had led the police party to area of Kalarpur, pointing out the place where they had abandoned the tractor and on 16.05.2000 Dinesh Kumar had led the police party to the forest of Kalarpur pointing out place where the tractor was abandoned, memo of identification had been prepared in that regard. Therefore, prosecution story gets fortified from the disclosure statement of the accused-convicts leading to their pointing out the place where they had committed murder of Gurmail Singh, the place where they had thrown dead body of Gurmail Singh and the place where they had left the tractor. Although, strictly speaking the disclosure statements of the accused/convicts are relevant to the extent of the facts discovered in pursuance of such disclosure statements having been made by accused-convicts. But then the Court is not considering the confession part by accused-convicts which is otherwise incriminating but not leading to discovery of new facts. Then the accused-convicts had a strong motive in the incident, to commit murder of Gurmail Singh and robbing him of the tractor which was in his possession.

One more thing is to be taken note of is as a result of post-mortem examination on dead body of deceased, ligature mark of size 53 cm x 8 cm were found present around the neck over thyroid and hyoid cartilage. The doctors had given the cause of death due to asphyxia because of strangulation which was ante-mortem in nature and sufficient to cause death in normal course of events, which means that the deceased had been strangled as suggested by ligature mark of considerable size

present around the neck of deceased and deceased had died due to that reason and thereafter, his dead body was thrown in the canal.

Both the accused are specifically named in the FIR, the complainant had no reason to involve the accused in this case wrongly and then to depose against them in the Court. Similarly, Karanjit Singh had no reason to testify against the accused as no previous enmity between either complainant and Karanjit Singh on one side and accused on other side is alleged or proved. As per the case of prosecution, on 13.05.2000 Mange Ram accused had taken the police party to the fields of Ishwar Dass, where the deceased had been killed, from that place a chappal of Dinesh Kumar-accused, a shoe of Gurmail Singh-deceased, blood stains and some hairs of the deceased were recovered which were taken into possession, that also points out the involvement of both the accused-convicts in the crime because, if they had nothing to do with the incident then their chappal would not have been left there.

Then accused-Dinesh Kumar in pursuance of the disclosure statement suffered by him had led the police party to his house from where he got recovered a Parna, currency notes amounting to ₹250/- and a wrist watch, those articles, Parna and wrist watch had been identified by the complainant to be belonging to the deceased.

The very fact that accused/convict-Dinesh Kumar alongwith his co-convict Mange Ram (since dead) were found missing from their houses since the day of incident points out to their involvement in the incident, in that way corroborating the prosecution story.

Therefore, in view of the detailed discussion above, the prosecution has successfully proved its case against the accused beyond a shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction is upheld. The appeal is found to be without any merit and dismissed accordingly.

Dinesh Kumar/appellant-accused is stated to be on bail vide order dated 14.12.2006 granted by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Jagadhri is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

Necessary directions in that regard be issued to the quarter concerned.

31.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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|----|------------------------------|------------|
| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |