

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

Crl. Appeal D-334-DB of 2003
Date of Decision : August 04, 2017

Parvesh and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Dr. Amarpreet Kaur Sandhu, Advocate
as legal aid counsel for the appellants.

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

T.P.S. MANN, J.

The appellants, namely, Parvesh son of Tala Ram and Raj Pal @ Raju son of Ram Sarup, residents of Vikas Nagar, Panipat have filed the present appeal against the judgment and order dated 4/10.3.2003 passed by learned Additional Sessions, Panipat vide which they were convicted under Sections 302/34 IPC for committing the murder by intentionally causing the death of Nawab Singh @ Rajesh in furtherance of their common intention and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months.

According to the prosecution, on 19.7.2001 at 2.30 p.m., Parbhu Dayal son of Jai Lal made statement Ex.PD before ASI Sultan Sigh at Police Post, GRP, Panipat on the basis of which FIR Ex.PD/1 under Sections 302/34 IPC was registered

against the appellants on 19.7.2001 at 4.15 p.m. at Police Station, GRP, Karnal by ASI Mangal Singh. Special report handed over to Constable Randeep Singh was delivered by him to the Duty Magistrate on 19.7.2001 at 7.15 p.m. The contents of the said statement Ex.PD are reproduced here-below:-

“Statement of Parbhu Dayal son of Jai Pal caste Lodhey Rajput r/o Purva Dhaka, P.S. Sourikh Distt. Kanoj (UP) aged 45 years.

I am resident of the above address and used to do work of cultivation in the village. I have four sons. Deceased Nawab Singh @ Rajesh aged 20/21 years was the eldest whereas remaining three are younger besides one daughter Sita Devi, aged 11 years. My son Nawab Singh used to work in a factory at Panipat for the last 5/6 years and was residing in the house of Shyam s/o Tala Ram in Vikas Nagar, Panipat whereas Parvesh s/o Tala Ram younger brother of Shyam who is also working in a factory at Panipat used to reside in a separate rented room in Vikas Nagar, itself, as a result of which he was having enmity with Nawab Singh. He was also suspecting illicit relations between Nawab Singh and wife of Shyam. Last year when I came to Panipat to see my son, Parvesh persuaded me to ask Nawab Singh to vacate the room of Shyam but Shyam himself told that as they are having good relations with Nawab, they will remain together. After that I went to my village. Two days back, I received a telephonic message about the death of

my son Nawab on which I alongwith my elder brother Karan Lal and Fakiri Lal s/o Dhal Chand caste Lodhey Rajput r/o Doduan Nagla, P.S. Sourikh Distt. Kanoj (UP) came to Panipat and I identified the dead body of my son and performed his last rites. I enquired about the death of my son in Vikas Nagar, Panipat and came to know that on the night intervening 14/15.7.2001, Parvesh s/o Tala Ram caste Lodhey Rajput r/o Purva Dhaka P.S. Sourikh Distt. Kanoj (UP) alongwith Raj Pal @ Raju s/o Ram Sarup caste Lodhey Rajput r/o Rutta Purva P.S. Tirba Distt. Kanoj (UP) who is working with Parvesh, took him to their room and administered liquor to Nawab and gave beatings to him at night time and when he became unconscious, murdered him and put his dead body on the railway line and it was cut into two pieces by a train. I am sure that my son Nawab has been murdered by Parvesh and Raj Pal @ Raju against whom I am entitled to get action be taken. LTI Parbhu Dayal. I have heard and understood the statement, it is correct.

LTI

Parbhu Dayal

Attested.

Sultan Singh, ASI
I/c PP/GRP, Panipat

Dt. 19.7.2001”

During the investigation of the case, ASI Sultan Singh recorded the statements of witnesses and arrested the appellants. During their interrogation, both the appellants made their disclosure statements. Pursuant to the same Raj Pal @ Raju-

appellant got recovered clutch wire Ex.P5 from the house of Munshi Ram where Parvesh-appellant used to reside which was taken into possession vide memo Ex.PF. They were again interrogated by Inspector Iqbal Singh. Raj Pal @ Raju-appellant got recovered one purse Ex.P7 containing Rs.20/- cash, one photograph of the deceased and one wrist watch Ex.P6 which was taken into possession. Parvesh-appellant also got recovered one iron rod Ex.P8 near the railway lines from the bushes. Both the appellants also got the place of occurrence demarcated. Statements of the witnesses were recorded and after completion of investigation, the appellants were found involved. Accordingly, final report under Section 173 Cr.P.C. was submitted against them. After commitment of the case, they were charged under Sections 302/34 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as sixteen witnesses.

PW1 Ramesh, Gangman in the Railways deposed that on the night of 14.7.2001 he was on duty at gate No.50 and at about 1.30 a.m. on 15.7.2001, a train came from the side of Panipat and stopped near gate No.50. He went there and found the dead body of a young male entangled in the lower portion of the engine which was taken out. The dead body was cut into two

pieces. He informed ASM Rajbir Singh.

PW2 Vijay Pal son of Durjan Lal before whom the appellants were alleged to have made extra judicial confession did not support the prosecution case and resiled from his stand taken during the investigation of the case.

PW3 Dr. Tejinder Kumar, Medical Officer proved the post-mortem on the dead body of Nawab Singh which he had conducted on 15.7.2001 at 5.00 p.m. and found eight injuries on the body.

PW4 Constable Sanjay Pal proved rough site-plans Ex.PC and PC/1.

PW5 Ashok Kumar Verma deposed about receipt of message from Rajbir Singh ASM that a dead body was found near gate No.50 at about 1.45 a.m. on 15.7.2001.

PW6 Rajinder Kumar, photographer proved the photographs Exs.P1 and P2 and their negatives Exs.P3 and P4.

PW7 Constable Krishan Lal deposed about ruqa Ex.PD being handed over to him for registration of the case and on its basis FIR Ex.PD/1 was registered by ASI Mangal Singh.

PW8 Rajbir Singh deposed that on receipt of information about the dead body, he apprised the Station Superintendent who in turn sent memo Ex.PE to the Police Post

for further action.

PW9 HC Randhir Singh deposed about the inquest proceedings Ex.PB/2 and got the dead body identified and subjected to post-mortem. He also deposed about recovery of clutch wire, purse, wrist watch and iron rod by the appellants pursuant to their disclosure statements.

PW10 Karan Lal witness of the recovery of clutch wire vide memo Ex.PF deposed accordingly.

PW11 Parbhu Dayal, father of deceased Nawab Singh deposed in support of the prosecution version as stated in his statement Ex.PD and disclosure statements and recovery of clutch wire by the accused.

PW12 Munshi Ram in whose room Parvesh-appellant used to reside as a tenant, did not support the prosecution version and was declared hostile.

PW13 SI Shiv Kumar, who was the Investigating Officer, deposed about the various steps taken by him during the investigation including recovery of clutch wire, etc.

PW14 ASI Sultan Singh deposed about recording of statement Ex.PD of Parbhu Dayal.

PW15 Raj Kumar testified about having found the dead body on the railway track after it got entangled with the

engine.

PW16 Inspector Iqbal Singh deposed about the recovery of purse, wrist watch and Rs.20/- from the person of Raj Pal-appellant pursuant to the disclosure statement made on 20.7.2001.

When examined under Section 313 Cr.P.C., the appellants denied the prosecution version and pleaded their innocence. According to them, Nawab Singh died on account of railway accident and nothing was recovered at their instance. In their defence, they did not lead any evidence.

After hearing learned Public Prosecutor for the State and learned counsel for the appellants and going through the entire evidence on the file, learned trial Court believed the prosecution version and convicted and sentenced the appellants, as mentioned above.

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

Learned counsel for the appellants has submitted that the appellants have been falsely implicated in the case. There was no eye-witness account. The recovery of watch, iron rod, clutch wire and purse was not sufficient to hold them guilty for the murder of Nawab Singh. Therefore, the appeal be accepted and they be acquitted of the charges against them.

On the other hand, learned State counsel has submitted that the prosecution has led cogent, convincing and satisfactory evidence to connect the appellants with the commission of the crime. Therefore, the appeal filed by them is devoid of any merit and, accordingly, it be dismissed.

According to the prosecution, the appellants had appeared before PW2 Vijay Pal and confessed before him that they had murdered Nawab Singh on the night between 14/15.7.2001. Parvesh-appellant separately confessed before him that on 14.7.2001 they had served liquor to Nawab Singh when Raj Pal-appellant was also present and after Nawab Singh came under the effect of liquor, he had strangulated him with the help of clutch wire making him unconscious. Thereafter, both the appellants had placed him on the railway track. Raj Pal-appellant also confessed his guilt in the same manner as was done by Parvesh-appellant. However, while stepping into the witness box as PW2, Vijay Pal did not support the prosecution case. He stated that though the deceased was known to him being a co-villager but he did not know the appellants nor they had confessed their guilt before him nor also he had produced them before the police. Even after being subjected to cross-examination by the learned Public Prosecutor, the prosecution could not bring any material on record from which the Court might find some material

to establish the guilt of the appellants. As such, it cannot be said that the appellants had made extra judicial confession before him.

Further, according to the prosecution, certain recoveries were effected from the appellants which could show the involvement of the appellants in the commission of the crime. Pursuant to the disclosure statement Ex.PJ made by Parvesh-appellant before PW13 Sub Inspector Shiv Kumar, one iron rod concealed under the earth near railway line bushes was recovered. Further, Raj Pal-appellant pursuant to his disclosure statement Ex.PK got recovered clutch wire Ex.P5, wrist watch Ex.P6 and purse Ex.P7 concealed under the newspaper in the room of Parvesh-appellant. The appellants had also demarcated the place of occurrence vide memos Exs.PM and PN. Regarding the various recoveries and the demarcation of the place of occurrence, the prosecution relied upon the testimonies of only police officials. No independent witness was joined while interrogating the appellants, recording of their disclosure statements and recoveries of the various articles at their instance. PW10 Karan Lal, who is a witness to the recovery of clutch wire at the instance of Raj Pal-appellant cannot be termed as an independent witness, being brother of the complainant and, thus, an interested witness.

PW12 Munshi Ram was produced by the prosecution

to establish that the deceased and Raj Pal-appellant were seen consuming liquor together in his house. However, he also did not support the prosecution case and stated that he was not present at the house on the day of the occurrence but was present in the factory. He also did not know Raj Pal-appellant and deceased-Nawab Singh. He was also cross-examined by the learned Public Prosecutor but no material could be brought on record to establish that Nawab Singh-deceased and Raj Pal-appellant had taken liquor together.

In view of the above, it cannot be said that the prosecution has led cogent and convincing evidence to connect the appellants with the commission of the crime. Natural corollary of the same would lead this Court to conclude that the prosecution has failed to prove its case against the appellants beyond reasonable doubt.

Resultantly, the appeal is accepted and the appellants are acquitted of the charges against them.

(T.P.S. MANN)
JUDGE

August 04, 2017
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No