

Criminal Appeal D-607-DB of 2003
Criminal Appeal D-60-DB of 2004

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal D-607-DB of 2003
Date of decision : February 6, 2017

Mange Ram

..... Appellant

Versus

State of Haryana

..... Respondent

Criminal Appeal D-60-DB of 2004

Bal Kishan @ Bala

..... Appellant

Versus

State of Haryana

..... Respondent

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

Present:- Mr. P. C. Chaudhary, Advocate
for the appellant in CRA-D-607-DB of 2003.

Ms. Anju Arora, Advocate
for the appellant in CRA-D-60-DB of 2004

Mr. Praveen Bhadu, AAG., Haryana.

H.S. MADAAN J.

Vide this judgment we intend to dispose of Criminal Appeal D-607-DB of 2003 filed by the accused-convict Mange Ram and Criminal Appeal D-60-DB of 2004 filed by Bal Kishan @ Bala, both of them being accused convicted by the Court of Additional Sessions Judge, Bhiwani vide judgment dated 10.6.2003 and sentence order dated 14.6.2003

sentencing them as follows:-

Mange Ram	
Section 302 read with Section 34 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year and six months.
Bal Kishan alias Bala	
Section 302 read with Section 34 IPC	Rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year and six months.

Feeling aggrieved by the said judgment of their conviction and sentence, both the convicts had brought separate appeals praying that the impugned judgment be set aside by way of acceptance of their appeals and they be acquitted of the charge framed against them.

Briefly stated, facts of the case, as per prosecution story, as borne out from the report under Section 173 Cr.P.C and documents attached therewith and as un-folded during the trial are that on 14.1.1999, in the evening, Surender @ Pappla, aged about 32-33 years had consumed liquor with his Seeri (agricultural labourer) Mange Ram son of Neki Ram resident of Village Jamalpur and Bal Kishan @ Bala son of Badri, resident of that very village at house of Mange Ram and thereafter he was not traceable despite being a report having been lodged to find him.

On 17.1.1999 at about 9.00/10.00 A.M. a Chaddar (unstitched cloth) of Surender was found lying in pacca Johar (pond) of their village. Complainant Joginder Pal son of Jumma Ram of Arora community, resident of Jamalpur, aged 35/36 years, agriculturist by profession and maternal Uncle of Surender was going to the police station to lodge report of the matter. On the way, at Bus stand, Jamalpur he came across police

party headed by SI/SHO Rajender Kumar of Police Station Sadar, Bawani Khera, District Bhiwani (hereinafter referred to as 'the Investigating Officer/I.O.) who recorded statement of Jogender Pal as Ex. PC. The said statement was signed by complainant Jogender Pal, and his signatures were attested by SI Rajender Kumar. The Investigating Officer appended his endorsement Ex. PG/1 below that statement and sent ruqa to the police station, on the basis of which a report was entered in the DDR, copy of which being Ex. PH. Then the police party accompanied by the complainant went to the pond. The divers were pressed into service and they recovered dead body of Surender from the pond. The Investigating Officer carried out inquest proceedings with regard to un-natural death of Surender and prepared a report in that regard Ex. PC. The Chaddar Ex. P11 was taken into police possession. The Investigating Officer recorded statements of witnesses and got postmortem examination conducted on the dead body.

On 22.1.1999, a police party led by SI Rajender Kumar again went to village Jamalpur for verification of facts where he came across Joginder Pal, complainant, who in his supplementary statement named Bal Kishan @ Bala and Mange Ram accused as suspects for committing murder of Surender, on the basis of which vide Ex.PH/1 offences under Section 304/34 IPC were added and a formal FIR Ex. PH/2 was recorded. The Investigating Officer prepared rough site plan Ex. PJ.

On 23.1.1999 the police party went to Bus Stand Bawani Khera for search of accused persons where Bansi Dhar and Sham Lal produced accused Mange Ram and Balkishan @ Bala before him. Both of them were interrogated and they suffered separate disclosure statements Ex.

occurrence demarcated.

On 24.1.1999, both the accused got place of occurrence demarcated and Memos of demarcation Ex. PE and PF respectively were prepared. The Investigating Officer recorded the statements of witnesses.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of Illaqa Magistrate.

On presentation of challan in the Court of Illaqa Magistrate, copies of the documents, relied upon therein as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

Then observing that the challan had been filed for offence under Section 304/34 IPC and such offence being exclusively triable by the Court of Sessions, the Magistrate committed the case to the Court of Sessions. Bhiwani, from where it was entrusted to the Court of Additional Sessions Judge, Bhiwani.

Then after making consideration, charge for offence, under Section 302 read with Section 34 IPC was framed against both the accused, to which they pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, the prosecution examined as many as eleven PWs.

PW-1 Parmod Kumar, photographer from Village Jamalpur, running photo studio under the name of Hina Photo Studio stated that at the asking of Jaggi tailor he had clicked five snaps of dead body of Surender @ Pappla lying near the pond of their village. He proved

photographs Ex. P-1 to P-5 and negatives Ex. P-6 to P-10.

PW-2 Krishan Kumar, stated that on 20.2.1999, he had prepared scaled site plan Ex. PA of place of recovery of dead body and the demarcation at the spot was given by Jogender Singh.

PW-3 HC Attar Singh stated that on 18.1.1999, he was posted as MHC at Police Station Bawani Khera. On that day, Constable Randhir Singh produced before him a sealed parcel allegedly containing viscera of the deceased; that he had kept the same in the Malkhana and on 20.1.1999 had handed it over to Constable Ram Phal No.399 for depositing the same in the office of the Forensic Science Laboratory, Madhuban, for necessary examination and report.

PW-4 Constable Ram Phal, who had taken the sealed parcel of the viscera of deceased from MHC Attar Singh on 20.1.1999 and deposited it in the office of FSL deposed in that regard stating that so long as the parcel remained with him seals thereon remained intact.

PW-5 Dr. K. D. Sharma, Senior Medical Officer, Civil Hospital, Bhiwani stated that on 18.1.1999, he along with Dr. A. C. Yadav had conducted postmortem examination on dead body of Surender @ Pappala aged about 32 years, resident of Jamalpur and observed as under:-

“A well built and nourished young man wearing yellow sweater, white printed shirt, blue Baniyan, blue kachha, black pant, body was smeared with mud. Froth coming out of nostril and smeared with mud. Eyes closed, mouth closed skin of palm hands and foot wrinkled. Rigor mortis present all over the body. Cloths were wet, face was pale. Post Mortem staining was present on head and neck and back and patient was wearing black shoes.

His larynx and trachea contained fine white muddy froth. Lungs were heavy oedematous, distended pit pressure, pale grey colour with reddish stain on section frothy blood stained fluid found.

Left side of the heart was empty and right side was full. The mouth was healthy and congested and smeared with mud. Stomach contained muddy water.

The stomach was sent to Chemical Examiner as a whole. A part of small intestine and part of large intestine were sent to the Chemical Examiner, part of liver was sent to the Chemical Examiner. Spleen, and part of both the kidneys were sent to the Chemical Examiner.”

The witness further gave probable time between injuries and death no applicable and between death and postmortem within two days i.e.48 hours. He proved copy of the post mortem report as Ex.PB, the police application for conducting the postmortem report as Ex. PB/1 and the inquest report bearing his signatures as Ex.PC.

He further deposed after receipt of report of the Chemical Examiner Ex. PD, that the cause of death in his opinion was drowning leading to Asphyxia, which was sufficient to cause death in ordinary course of life.

PW-6 Subhash Chander deposed that about one and half years back, Hans Raj, Joginder Pal had contacted him to fish out the dead body from the tank in village Jamalpur and he accordingly did so. (his statement was recorded on 24.5.2001).

PW-7 Darshan Lal stated that on 17.1.1999 at about 7.00

A.M., he had gone to the pond for answering call of the nature and he was washing his hands in the pond, there was a lot of fog at that time. He found that Mange Ram accused took out one Chaddar from the lap from his blanket and threw the same in the pond; that he returned to his house and Mange Ram also left. On 22.1.1999 he had narrated the incident to Joginder.

PW-8 Narender Kumar, resident of Village Jamalpur stated that on 14.1.1999 Surender had met him near pond of Village at about 4/5 P.M. He told that he was going to the house of Mange Ram to settle the account. The witness concluded his examination-in-chief stating that Surender went to the house of Mange Ram and he had gone to his house.

PW-9 Bansi Dhar stated that on 23.1.1999 he and Sham Lal were present in his house at about 5.00 P.M. At that time, Mange Ram and Bal Kishan came to them; Mange Ram stated that since he (this witness) was Mama (maternal uncle) of Surender and they had dealing of Rs.10,000/- with Surender, which amount Surender used to demand but Mange Ram avoided on different occasions; on 14.1.1999, Surender had gone to the house of Mange Ram for demanding Rs.10,000/- and at that time Bal Kishan was also present with him, then they i.e. Mange Ram, Bal Kishan and Surender consumed liquor; Surender was given more liquor and Mange Ram and Bal Kishan consumed lesser quantity of liquor. Thereafter, Mange Ram and Bal Kishan had thrown Surender in the pond. In that Surender had been killed by them i.e. Mange Ram and Bal Kishan. According to this witness, Bal Kishan had also made similar statement to him. He told them that they had already reported the matter to the police and they could depose

Village Bawani Khera and were produced before the police at Bus stand Bawani Khera.

This witness further deposed that on 24.1.1999 accused had shown the place of occurrence to the police in his presence from where Surender was thrown in the Johar and demarcation Memo Ex. PE and PF were prepared which were signed by him.

PW-10 Rajender Kumar, SI (Retd.) the Investigating Officer deposed regarding the investigation conducted by him proving various documents.

PW-11 Joginder Pal deposed in consonance with the prosecution story.

With that evidence of the prosecution got concluded.

Statements of accused under Section 313 Cr.P.C were recorded in which they were put all incriminating circumstances, appearing against them but they denied the allegations and stated that they are innocent and have been falsely implicated in this case

The accused did not lead any evidence in defence.

After hearing the arguments, learned Additional Sessions Judge, Bhiwani convicted and sentenced both the accused as mentioned above, which left them aggrieved and they have filed the present appeals.

We have heard learned counsel for the appellants and the Assistant Advocate General, Haryana besides going through the record and we find that the impugned judgment of conviction and order of sentence have no legs to stand and are bound to be set aside by way of acceptance of appeal.

This is a case based upon circumstantial evidence. The

law is well settled that in such an eventuality the chain of events must be complete and if any vital link in the chain is missing, then conviction of the accused cannot be based.

Furthermore, in a case based upon circumstantial evidence, motive plays a vital role. In the instant case, prosecution has been unable to provide a complete chain of events and to establish a strong motive for the incident. With no direct evidence of the incident the prosecution story is mainly based upon last seen evidence provided by PW-8- Narender Kumar as well as extra judicial confession said to have been made by the accused before PW-9 Bansi Dhar on 23.1.1999 and recovery of chaddar of deceased.

First, coming to the last seen evidence provided by PW-8 Narender Kumar. As a matter of fact, he nowhere claimed to have seen deceased in company of accused on 14.1.1999, rather he stated that on the said day, the deceased had met him near the pond at about 4/5 P.M. and informed that he was going to house of Mange Ram to settle the account and thereafter deceased proceeded towards house of Mange Ram. Things would have been quite different and provided much more incriminating circumstance qua the accused, if this witness or any other person might have seen deceased in company of accused soon before disappearance of the accused but it was not so.

One more factor to be taken into consideration is that this witness kept quiet for a pretty long time not disclosing to relatives of the deceased or to the police what he claimed he had stated in the Court appearing as PW-8. The explanation rendered by him in his statement is

hospitalized where he remained for 26/27 days returning to the village on 12.2.1999. He stated that when he returned to his village, he came to know that Surender had died and that accused in the case were arrested. The police had summoned him after ten days of his return to the Village and during that period he had not met Joginder Pal or any other PW of this case. His silence and inaction for a pretty long time puts a big question mark over the truthfulness of his version.

Next, coming to the testimony of PW-9 Bansi Dhar, who had claimed that on 23.1.1999 both the accused had come to his house at about 5.00 P.M., at that time, Sham Lal was also there; both the accused made extra judicial confession of their having committed murder of Surender after consuming liquor together, inasmuch as Surender was made to consume more liquor and they themselves consumed lesser quantity of liquor, thereafter throwing him in the pond; the reason given being that on 14.1.1999 Surender had gone to house of Mange Ram for demanding Rs. 10,000/-. However, keeping in view replies given by him in his cross-examination and that when his testimony is analyzed in light of facts and circumstances of the case, then his deposition does not come out to be trustworthy for various reasons; firstly, PW-9 Bansi Dhar is a close relative of the deceased being his maternal uncle as stated by him in his examination-in-chief. It is highly unlikely that the accused would have approached such a close relative of deceased making a clean breast of their criminal acts rather than approaching some respectable person of the village like Sarpanch, Nambardar etc., which this witness is admittedly not.

Secondly, PW-10 SI Rajender Kumar, the Investigating

had informed him that Bal Kishan and Mange Ram had come to his house and had made extra judicial confession regarding their having committed murder of the deceased. In fact, if it had so happened, the Investigating Officer would definitely have made mention in that regard in his testimony, which he did not.

One more factor to be taken into consideration is that PW-10 SI Rajender Kumar, though stated that on 23.1.1999 Bansi Dhar and Sham Lal produced Mange Ram and Bal Kishan before him but he did not make any mention that Bansi Dhar and Sham Lal had informed him that both the accused had made extra judicial confession before them on that very day, therefore, the evidence led by prosecution in that regard does not inspire confidence and is difficult to be accepted.

Coming to testimony of PW-10 SI Rajender Kumar, he had stated that on being interrogated both the accused had suffered disclosure statements Ex. PK and PL that they could get the place of occurrence demarcated and on 24.1.1999 both the accused separately got the place of occurrence demarcated and Memos Ex. PE and PF were prepared in that regard. However, it has to be taken into view that no recovery had been got effected by the accused in pursuance to those disclosure statements and one more question which arises in the mind of Court is when, according to this witness, the accused had made disclosure statement on 23.1.1999 then why they were not taken to the disclosed place on that very day and were taken on the next day. The whole thing is shrouded in suspicious circumstances and cannot be accepted. Then there is contradiction between the ocular evidence as well as medical evidence, inasmuch as according to

liquor had pushed the deceased in the pond, who had died as a result of drowning which was done on 14.1.1999. But if we see statement of PW-5 Dr. K. D. Sharma who had performed postmortem examination on dead body of deceased on 18.1.1999, he had given the probable time which elapsed between death and postmortem as two days i.e. 48 hours. Going back by 48 hours it is to be taken that the death had taken place on 16.1.1999 which is quite different from the prosecution story of death of the deceased occurring on 14.1.1999. In his cross-examination the doctor reiterated this fact and stated that duration between death and postmortem is between 48 hours and not beyond that. Although, at the request of the prosecution the witness was re-called for further statement, when he stated that possibility cannot be ruled out for death in early dates as in cold atmosphere conditions if the dead body is immersed in cold water, then rigor mortis may disappear later on which the duration has been given. He had referred to Modi's jurisprudence in that regard proving his report Ex. PM/1. In his cross-examination, he stated that his opinion Ex. PM/1 was given keeping in view season and weather at that time. Thus, it comes out that the explanation rendered while this witness appeared again in the Court on 31.5.2001 is clearly an after thought and is not helpful to the prosecution. The medical evidence creates a clear dent in the prosecution story.

Furthermore, as stated by PW-5 Dr. K. D. Sharma in his cross-examination he had not mentioned the alcohol smell in the postmortem report detected from that, when according to the prosecution story, deceased had taken alcohol before he was pushed in the pond and had died as a result of drowning. It may be mentioned here that the prosecution

story has become vacillating as regards deceased being in habit of taking liquor. Complainant Joginder Pal appearing PW-11 although stated in his examination-in-chief that on 14.1.1999 Surender had gone to the house of accused Mange Ram where Mange Ram, Bal Kishan and Surender took liquor and thereafter he did not return home though his Chaddar was traced out in the Johar, but in his cross-examination he stated that he had not seen accused in company of the deceased taking liquor and further Surender was not consuming liquor. If Surender was not consuming liquor then how could accused make him take liquor and thereafter push him in the pond. In the report of Chemical Examiner Ex.PA, no traces of alcohol are mentioned to have been detected in the viscera of the deceased. Then no strong motive for the incident could be established by the prosecution. The motive that Mange Ram owed Rs. 10,000/- to the deceased has not been proved satisfactorily on the file and as regards Bal Kishan @ Bala, no such motive has been suggested or proved. As regards recovery of Chaddar of deceased the evidence in that regard in the form of statement of PW-7 Darshan Lal is equally un-convincing. As per his own version in his examination, there was lot of fog. It is un-likely that he could have seen Mange Ram throwing Chadder from his blanket in the pond. Not distinct mark of the Chadder, from which he could identify it has been mentioned in his examination. He stated that he is a relative of the deceased. Therefore, the recovery of Chadder which was found to be floating in the pond cannot be taken to be any incriminating circumstance against the accused.

We find that judgment of conviction and order of sentence rendered by the trial Court are based upon mis-appraisal of evidence and wrong interpretation of law. The prosecution had failed to

prove its charge against the accused beyond a shadow of reasonable doubt and benefit of doubt should have been given to the accused which was wrongly denied to them. The judgment of conviction and sentence against the accused-convicts-appellants cannot stand judicial scrutiny, since it is not established on file that both the accused while sharing a common intention had committed murder of Surrender. Thus, both the appeals are accepted, the impugned judgment of conviction and order of sentence passed against both the accused-appellants are set aside by way of acceptance of appeals and they are acquitted of the charge framed against them.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

February 6, 2017
archana

Whether speaking/reasoned	Yes
Whether Reportable	No