

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-907-DB of 2003

Date of decision : 1.5.2017

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Dinesh Kumar and another

.....Appellants

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Ms Shweta Nahata, Advocate as Legal Aid Counsel
for the appellants

Mr. Praveen Bhadu, Assistant Advocate General, Haryana

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H. S. Madaan, J.

This appeal has been filed against judgment and order dated 20.11.2003 passed by the Court of Additional Sessions Judge (Adhoc), Jhajjar, vide which he had convicted accused Dinesh Kumar and Devender @ Marinda for offences under Sections 302/382 read with Section 34 of Indian Penal Code (for short 'IPC'), sentencing them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo further rigorous imprisonment for six months for the former offence and rigorous imprisonment for five years and to pay a fine of Rs.3,000/- each and in default of payment of fine to undergo further rigorous imprisonment for three months, for the latter offence. The

substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court, pray that the appeal be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case as per prosecution version are that on 11.6.2002, a telephonic message was received at Police Station City Bahadurgarh, that Balaji Textiles Factory situated at Street No. 3, Jhajjar Road, Bahadurgarh, was locked and its Manager Ram Chanderan was lying in tied condition in the canteen. As such, Inspector Rajpal Singh, SHO, alongwith other police officials went there. The lock of the factory was got broken open and it transpired that Ram Chanderan had expired. Dinesh son of Basant Kumar, resident of Delhi, aged about 24 years, owner of the factory, got recorded his statement Exhibit PA, with the Investigating Officer/IO in which he stated that he is running the concern Balaji Textiles, for the last 7-8 years, where he had employed Ram Chanderan of Nand Nagri, Delhi, as Contractor-cum-Manager, with 12-13 workers having been in employment of that concern; Ram Chanderan, after receiving money from the complainant used to distribute wages to such employees. On 9.6.2002, Ram Chanderan had taken a sum of Rs.20,000/- from him for that purpose. Ram Chanderan used to stay in the factory throughout all the time; in addition to him some other employees, namely, Devender, Dinesh, Ajit and Kala, used to stay in the same premises in a separate room in the factory. On 10.6.2002, after distribution of wages amount, Kala

Ram at 6.00 P.M. and Ajit in the morning, had gone home in Uttar Pradesh. Devender @ Marinda and Dinesh, residents of Modi Nagar, Uttar Pradesh, in addition to Ram Chanderan, remained in the factory premises. On 11.6.2002, in the morning, he received a telephonic message at Delhi from Rajinder, that main gate was locked from inside, while room of the workers was locked from outside and there was no one in the factory.

Inter alia in the statement, the complainant stated that he reached his factory at Bahadurgarh and found it locked; however, when he went inside, after opening the window of the canteen, found that Ram Chanderan was tied dead with a nylon rope (*niwar patti*); then he informed the police; when the police came it was found that hands and feet of Ram Chanderan were tied and nylon rope was stretched near his neck. He further stated that Devender and Dinesh, his factory workers had a tussle with Ram Chanderan over something and they had strangled him to death and then throwing his dead body in the canteen, had escaped after locking the door from outside. Accordingly, he sought taking of appropriate action.

Inspector/SHO put his endorsement below that statement and sent ruqa to Police Station through Constable Rajesh Kumar at 3.25 P.M., on the basis of which formal FIR Exhibit PA/2, was recorded at the Police Station by SI Hukam Singh. Then the Investigating Officer/IO carried out inquest proceedings with respect to dead body of Ram Chanderan, preparing report Exhibit PK, he inspected the spot and got the photographs of the dead body clicked. He prepared rough site plan of the place of incident as Exhibit PL.

Then he deputed Constable Shree Niwas, handing over application Exhibit PM, to him for the purpose of getting post mortem examination conducted on the dead body of Ram Chanderan. The Investigating Officer/IO recorded statements of the witnesses. From the office room, he took into possession one note book Exhibit P-3, containing entries regarding roll call and disbursement of wages vide recovery memo Exhibit PJ.

On 12.6.2002, Constable Shree Niwas came to the police station and handed over post mortem report and inquest papers duly signed by doctor, to the Investigating Officer. The police searched for the accused, but they were not available. A police party was deputed to visit Modi Nagar, Uttar Pradesh, in order to search for the accused and nab them. On the intervening night of 15/16.6.2002, ASI Omvir Singh, conveyed to the Investigating Officer telephonically that accused were not available at Modi Nagar, but the persons connected with them had given an assurance that accused would be produced before the police at the earliest. The Investigating Officer/IO went to Modi Nagar, where Rishi Pal, father of Devender accused, produced both the accused before him. Both the accused were formally arrested in this case and were interrogated regarding the incident. Devender @ Marinda made a disclosure statement Exhibit PN, that an amount of Rs.2,250/- and one transistor, which had fallen to his share and out of that he had spent some money and produced an amount of Rs.1,900/- before the Investigating Officer and the transistor had been kept concealed by him in the bushes near the Balaji Textile Factory, Bahadurgarh, which he could get recovered. Similarly, accused

Dinesh had made a disclosure statement Exhibit PO, that an amount of Rs.2,250/- and one torch of that factory had fallen to his share alongwith a key. He produced Rs.1,600/- before the Investigating Officer and regarding torch and key, he disclosed that he had kept concealed the same in bushes near the factory at Balaji Textiles, Bahadurgarh and could get the same recovered.

The Investigating Officer took into possession the money produced before him by the respective accused i.e. by Devender @ Marinda vide memo Exhibit PC and Dinesh vide memo Exhibit PE. Then the accused, while in police custody led the police party to the disclosed places. Devender got recovered transistor Exhibit P-4, from the bushes situated on the eastern wall of Textile Mill wrapped in a polythene cover and it was taken into possession vide recovery memo Exhibit P-3. Then Dinesh got recovered a torch Exhibit P-5 and key Exhibit P-6, from the same place at a small distance, which were taken into possession vide recovery memo Exhibit PD. The Investigating Officer prepared a rough site plan of the place of recovery as Exhibit PQ with respect to Devender @ Marinda and Exhibit PR with respect to Dinesh. He got prepared scaled site plan of the place of incident and took into possession the photographs.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Bahadurgarh.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Bahadurgarh, copies of documents relied upon therein were supplied to the accused free of cost as provided under

Section 207 Cr.P.C. and then finding that offence under section 302 IPC was exclusively triable by the Court of Sessions, the Sub Divisional Judicial Magistrate, Bahadurgarh, committed the case to the Court of learned Additional Sessions Judge, Jhajjar, vide commitment order dated 10.8.2002.

When the case was received in the Court of Additional Sessions Judge, Jhajjar, then finding prima facie charge for offence under Sections 302, 382 read with Section 34 IPC was disclosed against the accused, charge sheeted them accordingly, to which they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, the prosecution examined as many as 11 PWs, as per details below.

PW-1 complainant Dinesh deposed as per the prosecution story. His father Basant Kumar appearing as PW-6 and employee Vijender appearing as PW-7, supported him on material points.

PW-2 Dr. K.K. Jakhar, Medical Officer, General Hospital, Bahadurgarh, who on 12.6.2002 had conducted post mortem examination on dead body of Ram Chanderan, son of Subarmanyam, aged 60 years, resident of House No. 1536, Janta Flat Nand Nagri, Delhi, deposed that his observations were as under :-

“ 1. A circular mark in the lower part of neck about 2” in breadth the base of ligature mark is yellowish and margins reddish. The base is slightly depressed.

A dead body of about 60 years wearing white

colour baniyan half sleeves and slati colour underwear with pockets. Eyes closed, mouth open, reddish froth was coming out from mouth and nose. No rigor mortis in neck or either limbs. Post mortem staining present in back. Faecal soiling present. Mark of ligature in neck present, upper limbs and upper limbs just above wrist joints. Circular in shape, ligature mark on bilateral lower limbs just above ankle joint, circular in shape and about 2 inch in breadth. On dissection mark of ligature in neck and upper limbs, ecchymosis in subcutaneous tissues were present. Ecchymosis in muscles were present. Laceration of sheath of internal coat of carotid arteries seen in neck. Membranes and brain congested, spinal cord not opened. Walls, ribs and cartilages healthy, pleura congested patchy B/L. Larynx and trachea congested and reddish froth present in bronchi, trachea and larynx. Right lung congested reddish froth present in bronchi alveoli. Left lung congested reddish froth present in bronchi alveoli. Pericardium healthy. Right side of heart full of dark blood and left side is empty. Large vessels healthy. Rest all viscera healthy.”

This witness further stated that the cause of death in his opinion was asphyxia as a result of strangulation by *niwar ki patti*;

that the injuries were ante mortem in nature and sufficient to cause death in the ordinary course of life. The witness proved post mortem report as Exhibit PF.

PW-3 Constable Jai Chand, Draughtsman, deposed that on 3.7.2002, he had gone to the spot and prepared scaled site plan Exhibit PG, at the instance of Dinesh PW-1.

PW-4 Constable Jagmohan, deposed that on 11.6.2002, he was posted at Police Station City, Bahadurgarh and on that day SI Hukam Singh handed over to him three envelopes of special reports and he delivered one to the Court of Illaqa Magistrate and other two to S.P. and DSP concerned.

PW-5 HC Shree Niwas, who on 11.6.2002 while posted at Police Station City Bahadurgarh, was member of the police party led by Inspector Raj Pal Singh, SHO of the Police Station and had gone to the spot and who had been directed by the Investigating Officer/IO to get the post mortem examination conducted on the dead body of the deceased, deposed in that regard.

PW-8 Inspector Rajpal Singh, the Investigating Officer/IO in this case testified regarding the investigation conducted by him proving various documents.

PW-9 Surender Kumar, Photographer, from Bombay Studio, Bahadurgarh, stated that on 11.6.2002, he was summoned to the spot by the Investigating Officer, where he clicked photographs of the dead body of Ram Chanderan, lying in the bathroom, which being Exhibits P-6 to P-9. He proved negatives as Exhibits P-10 to P-13.

PW-10 ASI Hukam Singh, deposed that on 11.6.2002, while

posted in Police Station City, Bahadurgarh, on receipt of statement of Dinesh Exhibit PA, recorded by Inspector/SHO Rajpal Singh, he had registered FIR Exhibit PA/2, in his hand and under his signatures and had sent special reports through Constable Jag Mohan to the Illaqa Magistrate, SP and DSP concerned.

PW-11 ASI Ombir, who on 16.6.2002 was associated with the investigation of the case, deposed regarding what had transpired in his presence.

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 same stating that they were innocent and have been falsely involved in this case. Accused - Dinesh and Devender @ Marinda took up the plea that Ram Chanderan had received telephonic message in the factory that nephew of Dinesh was ill and so he informed him in that behalf; that thereafter Dinesh obtained leave and Devender also obtained leave because they were of same village and they left for their village at about 3.00 P.M. with permission of Ram Chanderan; that they had no differences with Ram Chanderan and he used to call them whenever their services were required; that when they left the factory premises the workers Jaikishan, Bijender, Shree Ram, Bhola and another Devender, were present in the factory; that Jaikishan and Bijender were having differences with Ram Chanderan over the increase in their pay scale.

The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted both the accused and sentenced them as mentioned above, which left them aggrieved and they have filed the present appeal praying that the impugned judgment of their conviction and sentence be set aside by way of acceptance of appeal and they be acquitted of the charge framed against them.

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

In the instant case, no eye witness account of the incident is available, rather case is based upon circumstantial evidence. However, the chain of evidence and events is complete, which lead to an irresistible conclusion that it were the accused, who sharing a common intention committed murder of Ram Chanderan, besides committing theft of Rs.4,500/- from the almirah kept in the factory. It may be mentioned here that accused did not deny the fact that they had been working as employees in Balaji Textiles., Krishna Nagar, Bahadurgarh, belonging to Dinesh – complainant, where Ram Chanderan was working as a Manager. They have however, taken up a plea that they had no differences with Ram Chanderan, who used to call them whenever their services were required. Ram Chanderan had received a telephonic message in the factory that nephew of Dinesh was ill, so he informed him in that behalf. Thereafter, both the accused sought leave since they belong to same village and left for their village at 3.00 P.M., after permission of Ram Chanderan. They

deny having any hand in the incident. From the statement of PW-1 Dinesh, PW-6 Basant Kumar and PW-7 Vijender, it comes out that both the accused used to stay in the factory premises, so was Ram Chanderan. From statement of PW-7 it comes out that the accused used to threaten Ram Chanderan of putting him to death. That means, a motive was definitely there with the accused to commit murder of Ram Chanderan. Further more, they had committed theft of Rs.4,500/- from the almirah in the factory, which was part of amount of Rs.20,000/- given by complainant - Dinesh to Ram Chanderan for distribution among the employees. The accused while suffering disclosure statements, during the course of their interrogation by the Investigating Officer/IO, had got the stolen amount and articles recovered from their possession. Accused Devender in his statement Exhibit PN, had stated that Rs.2,250/- and one transistor had fallen to his share. He had handed over Rs.1,900/- to the Investigating Officer and pursuant to his disclosure statement, got recovered one transistor kept concealed in bushes near the factory premises. Whereas Dinesh had also suffered a disclosure statement Exhibit PO, that an amount of Rs.2,250/- and one torch and one key had fallen to his share, out of which Rs.1,600/- was available, which he produced before the Investigating Officer/IO and then in pursuance of his disclosure statement, got recovered torch and key, kept concealed by him in bushes near the factory premises. The recoveries had been got effected on 16.6.2002. The incident had taken place on the intervening night of 10/11.6.2002. Section 114 of the Indian Evidence Act, 1872, dilates that the Court may presume existence of

certain facts, providing that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) given below the said provision - 'The Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.' In the instant case, the accused have failed to account for possession of the stolen articles, which leads to the presumption that they had committed theft in the factory premises of Balaji Textiles, on the intervening night of 10/11.6.2002. Applying the principle of *res gestae* under Section 6 of the Indian Evidence Act, 1872, it can safely be taken that the accused had committed murder of Ram Chanderan, during the course of theft in order to escape safely from the factory premises. The accused are specifically named in the FIR lodged by Dinesh Kumar, owner of the factory, who suspected them of having committed theft and murdering Ram Chanderan. Both the accused had absconded from the factory premises after the incident. If they did not have any guilty intention, there was no reason for them to leave the factory premises and remain at large for so many days. Their plea that nephew of Dinesh had fallen ill, so he had informed Ram Chanderan, then both the accused had left the factory premises since they belong to the same village, for going home, is not substantiated by any evidence brought on file, therefore cannot be accepted. Dinesh was found in possession of key of the factory. As per the case of prosecution, the

factory was locked from inside. The accused were found missing, who had removed luggage and cash from almirah by breaking open the lock. PW-1 Dinesh - complainant had deposed in that regard. The circumstances are consisted with only one hypothesis i.e. guilt of the accused.

The judgment of conviction and sentence passed by the trial Court is well reasoned one, based on proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity in the said judgment, as such the same is upheld. The appeal is found to be without any merit and is dismissed accordingly.

The appellants - accused – convicts are stated to be on bail granted by this Court. Their bail is cancelled. They be taken into custody and made to undergo remaining sentence.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

1.5.2017

chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No