

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

(i) CRR No.1815 of 2016 (O&M)

Sonu s/o Munshi

...Petitioner

VERSUS

State of Haryana

...Respondent

(ii) CRR No.2793 of 2016 (O&M)

Sonu s/o Sube Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

Date of Decision: October 09, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sajjan Singh, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

CRM No.24225 of 2016 in CRR No.2793 of 2016

Heard.

For the reasons mentioned in the application, the same is
allowed. Delay of 74 days in filing the revision petition is condoned.

Main cases

This order shall dispose of above-mentioned two connected

revisions as both have arisen from same FIR.

The above-mentioned revision petitions have been filed by petitioners against respondent State of Haryana, challenging the impugned judgment of conviction dated 20.02.2014 and order of sentence dated 22.02.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Bhiwani, vide which the petitioners were held guilty under Sections 302, 201, 436 read with Section 34 IPC and they were sent to Special Home for two years and also challenging the judgment dated 17.02.2016 passed by learned Addl. Sessions Judge, Bhiwani, vide which appeal filed by petitioners was dismissed.

From the record, I find that the petitioners were sent to face enquiry for the commission of offences punishable under Sections 302, 201 and 436 read with Section 34 IPC in case FIR No.60 dated 13.02.2011. The brief facts of the case as noted down in the judgment passed by learned Principal Magistrate, JJB, Bhiwani, are as under:-

“2. The case of the prosecution is that on 12.03.2011, Charan Singh received a telephonic message from Raj Kumar alias Raju son of Lakhi Singh, resident of Jeetwanbass to the effect that the house where brother of Charan Singh namely Bhupender alias Bhoppal was residing had been burnt and there were spots of blood in that house and Bhupender was missing. According to prosecution, again some known persons telephonically informed Charan Singh at 10:30 PMN on 12.03.2011 itself that one dead body was lying in the fields of mustard and from the pocket of dead body one slip bearing mobile number has been found. Thereafter, Charan Singh along with his nephew Deepak reached at the spot and identified the dead body of Bhupender alias Bhoppal and found that his hands and neck were tied and there were injury marks on the head and eye of Bhupender. Thereafter on 13.03.2011, Charan Singh reported the matter to the police. Case of the prosecution is that on 14.03.2011, Raj Kumar alias Raju gave his statement under Section 161 Cr.P.C. and he disclosed to the police that deceased Bhupender was his friend and he was temporarily residing with him at village Jeetwanbass. Raj

Kumar further disclosed that he and deceased Bhupender were roaming in village Jeetwanbass on 11.03.2011 and on the same day at about 5:00 PM they took bottles of beer from Khokha of Khoga alias Satbir (uncle of juvenile Sonu son of Sube Singh). According to prosecution, Raj Kumar named present reasons on the basis of suspicion while stating that at that time juvenile Sonu son of Sube Singh was present there. According to prosecution, Raj Kumar alias Raju raised suspicion that Sonu son of Sube Singh along with his friend Sonu son of Munshi Ram and Shyam Lal has murdered BHupender alias Bhoppal. Thereafter, juveniles were arrested. According to prosecution, juveniles vide their disclosure statements admitted the guilt. According to prosecution, juvenile Sonu son of Sube Singh got recovered motorcycle bearing Regd. No.HR26-AA-9284 (hereinafter referred to be as motorcycle') used in the crime. According to prosecution, from juvenile Sonu son of Munshi danda and mobile phone Nokia were recovered and from accused Shyam Lal danda used for the commission of offence was recovered. The prosecution case as per disclosure statement is that on 11.03.2011, Raj Kumar and deceased Bhupender stolen beer bottles from the khokha of uncle of juveniles Sonu son of Sube Singh and thereafter on 11.03.2011 at about 5:00 pm, juveniles along with Shyam Lal upon the motorcycle conspired to kill Raj Kumar and Bhupender and thereafter they reached at the old house of Raj Kumar where they broken the door and saw Bhupender while sleeping and thereafter they gave beatings to Bhupender with danda, fists and slaps. Thereafter, they tore shawal lying there and tied hands of Bhupender and took him outside and after talking him to a distance they gave beatings to Bhupender and again tore down the shawl and put the same in the neck of Bhupender and strangulated him and thereafter they threw the dead body of Bhupender in the mustard fields. As per disclosure statements they took the part of shawl to the old house of Raj Kumar and gave fire to the preces of shawl and bed where Bhupender was lying with an attention to destroy the evidence. After completion of investigation, challan against the juveniles for the commission of offences punishable under Sections 302, 201 and 436 all read with Section 34 of the Indian Penal Code was submitted."

Learned Principal Magistrate, JJB, Bhiwani, after appreciating the evidence, held guilty and sent the petitioners to Special Home as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Bhiwani, vide judgment dated 17.02.2016.

Aggrieved from the above-said judgments, present revision

petitions have been filed by the petitioners.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that the present case is based on circumstantial evidence. In the case, which is based on circumstantial evidence, the motive plays a significant role. In the present case, there is no strong motive of any type to commit murder of Bhupender @ Bhoppal. Secondly, I find that there is no last seen evidence. No incriminating articles have been recovered in view of the disclosure statements. One Nokia phone has been recovered but there is nothing on the record to show that this phone belonged to deceased. Furthermore, recovery of the motorcycle, which is stated to be used in the crime, has also not connected by proving the record by leading cogent evidence that anybody has seen the petitioners taking Bhupender @ Bhoppal on that motorcycle. Next, I find that a *danda* has been recovered, though stated to be blood-stained but FSL has not given the report that *danda* was stained with human blood.

The perusal of the record shows that chain of circumstances is not complete. In the case of circumstantial evidence, chain of circumstances should be complete in such a way that it point towards the guilt of the accused-juveniles in conflict with law and none else. But, from the perusal of the evidence on record, I find that the chain of circumstances is incomplete.

As already discussed, there is no strong motive for the commission of offence. There is no extra judicial confession. There is no last seen evidence nor there is any recovery of incriminating article to

connect the juveniles with the crime. The mere fact that juveniles made

disclosure statements demarcating the place where the dead body was found, is also of no value. At that time, everybody was knowing that dead body was recovered from that demarcated place.

The perusal of the record shows that a reasonable doubt exists in the prosecution version. Both the Courts below have misread the evidence and have wrongly convicted the present petitioners. Therefore, the impugned judgment of conviction dated 20.02.2014 and order of sentence dated 22.02.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Bhiwani and judgment dated 17.02.2016 passed by learned Addl. Sessions Judge, Bhiwani, are set aside and petitioners are acquitted of the charges framed against them.

Therefore, finding merit in both the revision petitions, the same are allowed.

Learned counsel for the petitioners contended that juveniles have already completed their sentence at Special Home. If, the petitioners are still in Special Home, they be released immediately, if they are not required in any other case.

October 09, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No