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

**Date of decision: February 27, 2018
CRA-D-155-DB of 2012**

Jasvir Singh @ Baba Bindri

.....Appellant

Versus

State of Punjab

....Respondent

CRA-D-139-DB of 2012

Navjot @ Bablu

.....Appellant

Versus

State of Punjab

....Respondent

CRA-D-255-DB of 2012

Rakesh Kumar @ K.C.

.....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. P.S. Poonia, Advocate
for the appellant (in CRA-D-155-DB of 2012).

Mr. J.S. Dadwal, Advocate
for the appellant(s) (in CRA-D-139-DB of 2012 and
CRA-D-255-DB of 2012).

Ms. Ruchika Sabharwal, AAG Punjab.

A.B. CHAUDHARI, J

By this common order, above said all the three appeals are being
disposed of.

The appellants in theses three appeals have put to challenge the
judgment and order dated 06.01.2012 passed by the learned Additional

Sessions Judge, Ludhiana, in Sessions Case No.16 of 10.03.2009, by which appellants, namely Jasvir Singh @ Baba Bindi, Navjot @ Bablu and Rakesh Kumar @ K.C. were convicted for commission of offence under Section 302 of Indian Penal Code, 1860 (for short 'IPC') read with Section 34 IPC and sentenced to undergo Rigorous Imprisonment for life and fine in the sum of ₹10,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for 6 months.

FACTS

Briefly stated, the case of the prosecution was that on 23.10.2008, complainant-Ashok Kumar went to the police and got recorded a *ruqa* that his eldest brother Vijay Kumar resides in a house No.390, Mohalla Heera Nagar, Kakowal Road, Ludhiana along with his family on rent and was doing the property business. On 13.09.2008, Mahipal, Ranjit Singh and Gurdip Singh, residents of Basant Vihar extension were given beatings by Baba Bindri, Sonu, Monu Suniara, K.C., Bablu and a case under Section 307 IPC was registered against them with the Police Station Salem Tabri. In the said case, Vijay Kumar was the eye witnesses. Since the accused persons knew about it, they had grudge against Vijay Kumar. In the said offence under Section 307 IPC, Naresh Bala, the mother of Sonu had filed an application for conducting inquiry. SP, City-I/Traffic, Ludhiana had send summons pertaining to the said inquiry. Ranjit Singh had called his brother Vijay Kumar, on 22.10.2008 during noon to note down the summons. Vijay Kumar went there on motor-cycle, but did not return back, and as such, they were searching for him. Then they came to know that dead body of Vijay Kumar with injuries on his legs with sharp edged weapons was lying near the fruit market near New Deep Vihar Colony. He told

the police that he was of the firm opinion that his brother was murdered by the appellants and others and thereafter, threw his dead body near the fruit market. The motorcycle was lying parked in the nearby plot. The police reached at the spot and registered an offence and started investigation. The inquest was conducted, seizures were made, blood stain was collected from the earth, site plan was prepared, statements of witnesses were recorded and thereafter, the challan was filed in the Court. During interrogation, Jasvir Singh @ Baba Bindi made statement about the motorcycle used by them at the time of offence and the same was recovered from the house of Harvinderpal Happy. On 12.11.2008, Navjot @ Bablu and Rakesh Kumar @ K.C. were arrested and they made disclosure/recoveries of *chhuras* used in the commission of crime. Finally, the challan was filed. The prosecution examined 21 witnesses. The defence was of denial. The trial Court, thereafter, convicted the appellants as above. Hence, these appeals.

ARGUMENTS

In support of the appeals, learned counsel for the appellants submitted that the prosecution miserably failed to prove its case much less beyond reasonable doubt. The trial Court relied on the testimony of PW2, PW3 and PW4 as the witnesses on the last seen theory and that was the main reason for recording the conviction of the appellants. Learned counsel for the rival parties took us to the entire evidence of the witnesses and we have carefully gone through the same. It is important to note that PW1-Ashok Kumar, the real brother of the deceased, who lodged the *ruqa* with the Police Station was declared hostile. Similarly, PW2-Bikram Kumar also did not support the prosecution and he was also declared hostile. Other witnesses remained were

Ranjit Singh and Mahipal who have been believed by the trial Court as witnesses of last seen theory. Learned counsel for the appellants submitted that the evidence of both these witnesses is most untrustworthy and will have to be rejected. He also submitted that the trial Court has, for no reason, taken into consideration the evidence of PW2-Bikram Kumar, though, he did not support the prosecution case. The witnesses from the place where the murder said to have been taken place were not examined nor the prosecution has any explanation thereof. Finally, they submitted that the impugned judgment will have to be set aside.

Per contra, learned State counsel supported the impugned judgment and order and the reasons recorded therein. She submitted that the prosecution evidence is of last seen theory and that has been duly deposed by PW2, PW3 and PW4, who have been rightly believed by the trial Court. The witnesses had actually seen the assailants that they were chasing the deceased on motorcycles. The evidence of these witnesses has rightly been believed by the trial Court and there is no reason to interfere with the impugned judgment and order. She, therefore, prayed for dismissal of the appeal(s).

CONSIDERATION

We have carefully considered the entire evidence tendered by the prosecution before the trial Court. We have seen the entire record and we have also seen the reasons recorded by the trial Court for recording conviction. At the outset, we find that it is not the case of ocular evidence and therefore, the prosecution chose to rely on the last seen theory propagated by some witnesses. It is strange to note that the real brother of the deceased, PW1-Ashok Kumar, complainant did not support the prosecution and turned hostile. The evidence

of the other witnesses will have to be examined carefully.

As per Exhibit PA *ruqa* that is the statement of Ashok Kumar, the incident had taken place at noon in the city of Ludhiana and the murder had taken place near the fruit market near New Deep Vihar Colony, Ludhiana. In that *ruqa*, he expressed suspicion over the accused persons as offenders. In his substantive evidence before the trial Court, he turned hostile and did not at all support the prosecution case. PW2-Bikram Kumar also turned hostile and clearly stated before the Court, in examination-in-chief, that he did not see any accused person causing any injury to Vijay Kumar nor he knew anything about the accused persons and also did not know who killed Vijay Kumar. He denied all his suggestions given by him by the public prosecutor and thus, did not support the prosecution case. It is strange that the trial Court has, vide Para 41 of the impugned judgment, still treated him as a witness on the last seen theory which is factually incorrect. The said statement in the judgment, is therefore, factually incorrect. The trial Court should have been careful.

There is evidence of PW3-Ranjit Singh. He deposed that it was noon time and Vijay Kumar came to him at about 12 noon. He told him about the inquiry proceedings, which were being made by the police. Thereafter, Vijay Kumar left his house on his motorcycle. After 2-3 minutes of departure of Vijay Kumar from his house, 6-7 persons including the accused persons came on four motorcycles and chased Vijay Kumar. He remained in his house as he knew that those persons had grudge against him also. According to him, perhaps the murder was committed by the accused persons. It is significant to note that time of 2-3 minutes of departure of Vijay Kumar in the city of Ludhiana and thereafter, he claiming to have seen the accused persons on

motor-cycles, could be his own perception that those persons were chasing Vijay Kumar. There is no basis on which he is saying that merely because accused were on motorcycle, they were chasing him. His evidence, therefore, that the accused persons or 6-7 persons on four motor-cycles were chasing Vijay Kumar is his own perception and imagination assuming the accused had gone in the same direction. In a big city like Ludhiana, necessarily 6-7 persons or the accused persons could not be attributed such a role merely because they were on four motor-cycles and they had already chased the deceased. It is in this context, it is important to note his conduct. If he had inkling of possible danger to the life of Vijay Kumar & him as deposed by him, he would have taken steps to inform the police or other concerned persons by various modes including phone (mobile phone). The following portion from his cross-examination is relevant in that context, which reads thus:-

“..... Vijay Kumar had told me that accused are issuing life threat to him. I never told Vijay Kumar that we should go to the Police Station to lodge the complaint against the accused. I am having mobile phone. When Vijay Kumar was followed by four persons, regarding that I never informed the Police. I do not know whether councilor of the area informed the Police or not. I had informed the councilor that four persons are following Vijay Kumar. Thereafter, I never had any talk with the councilor regarding this incident. Whenever there is any problem I some time goes to the house of Ranjit Singh Dhillon councilor to discuss. Councilor never had any talk with me regarding the present case. After suffering my statement before the Police thereafter I never went to the P.S. regarding the present case. When Vijay Kumar was killed thereafter I visited the spot where he was killed. My brother Amrik Singh, who is Head Constable, informed me that Vijay Kumar has been killed. When I was

informed regarding the incident thereafter I went to the P.S. At that time my brother was not accompanying me.....”

His explanation in the examination-in-chief itself that he remained in the house as he knew that accused persons had also grudge against him instead of informing the police on telephone or otherwise is unsatisfactory and highly improbable. His conduct in keeping quite is inconsistent with his last seen theory. To sum up, his evidence is only to the extent that it was his perception that on four motor-cycles, 6-7 persons had chased Vijay Kumar.

The next witness is PW4-Mahipal. PW4-Mahi Pal is not a witness in fact on the last seen theory. He only deposed that on 22.10.2008 at about 12-12:30 noon, Vijay Kumar left the house of Ranjit Singh on motor-cycle and that he saw accused persons on 3-4 motor-cycles chasing Vijay Kumar. The material portion regarding the alleged chasing by the accused persons as aforesaid is a major omission amounting to contradiction in his evidence. He did not tell the police when his statement was recorded, regarding chasing by the accused persons on motor-cycles. That is the only material part of the evidence which is significant in his evidence. But, then that is a major improvement and therefore, we refuse to believe his evidence. We quote the relevant portion from his cross-examination, which reads thus:-

“.....We never informed the police that on 22.10.08 the accused were chasing Vijay Kumar. I do not know the registration number of motor-cycle on which accused were travelling and were chasing Vijay Kumar. I did not state to police in my statement regarding “chasing” of accused on motor cycles.....”

The trial Court has ignored this material aspect of the matter.

It is the case of the prosecution itself that the site of the murder was near the fruit market in the open area that too in the noon time say at

around 12 to 1 P.M. In our opinion, it was obligatory on the part of the investigating officer to investigate and record statements of the witnesses near the fruit market as to the incident of murder. It is, however, strange to note that the prosecution did not bring a single witness from the entire area of the fruit market or the shops or the neighbourhood when the murder had taken place in the broad day light at around 1 noon. We refuse to believe, in the absence of any explanation from the prosecution and the investigating officer that none had seen the incident of murder in such a broad day light in a busy fruit market. We think this is the major lacuna in the prosecution case because there is no explanation whatsoever and when the prosecution simply relies on the last seen theory.

The evidence regarding recovery of weapons and motor-cycles and finding of human blood on *chhuras* cannot lead us to record conviction for the serious offence of murder.

In the result, we find that the benefit of doubt, at any rate, must go to the accused persons. The impugned judgment and order of conviction and sentence cannot be upheld. In the result, we make the following order:-

ORDER

- (i) **CRA-155-DB of 2012** filed by appellant-Jasvir Singh @ Baba Bindri, **CRA-D-139-DB of 2012** filed by appellant-Navjot @ Bablu and **CRA-D-255-DB of 2012** filed by appellant-Rakesh Kumar @ K.C., are allowed;
- (ii) The impugned judgment and order 06.01.2012 passed by the learned Additional Sessions Judge, Ludhiana, in Sessions Case No.16 of 10.03.2009, by which appellants, namely Jasvir Singh @ Baba Bindi, Navjot @ Bablu and Rakesh Kumar @ K.C. were convicted for commission of offence under Section 302 read with Section 34 IPC and sentenced to undergo Rigorous Imprisonment

for life and fine in the sum of ₹10,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for 6 months, is set aside;

- (iii) All the three appellants named above are acquitted of the charge under Section 302 read with Section 34 IPC;
- (iv) They be set at liberty forthwith, if not required, in any other case.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 27, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No