

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

(1) **CRA-D-784-DB of 2010(O&M)**

Vinod

...Appellant

Versus

State of Haryana

...Respondent

(2) **CRA-D-979-DB of 2010(O&M)**

Kartar Singh

...Appellant

Versus

State of Punjab

...Respondent

Date of decision:-29.11.2018

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : None for the appellants.

Ms.Tanisha Peshawaria, DAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two
appeals i.e. CRA-D-784-DB of 2010 filed by Vinod, CRA-D-979-DB-

2010 filed by Kartar Singh, both accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Jhajjar for the offences under Sections 392/302/411 and 201/120-B IPC, whereas their co-accused Raghubir, Rajinder, Vijay Kumar, Hari Kishan, Raj Kumar, Dinesh Kumar and Radhey Shyam were acquitted, vide impugned judgment dated 18.5.2010 and vide order dated 21.5.2010, Vinod and Kartar Singh were sentenced as follows:

Offence under Section	Sentence Awarded
Section 392 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo imprisonment for a period of one year each.
Section 302 IPC	Rigorous imprisonment for life and to pay a fine of Rs.20,000/- each and in default thereof, to further undergo imprisonment for a period of two years each.
Section 201/120-B IPC	Rigorous imprisonment for five years and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo imprisonment for a period of one year each.
Section 411 IPC	Rigorous imprisonment for two years each.

All the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court, pray that their appeals be accepted, the impugned judgment

of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the facts of the case as per the prosecution story are that complainant Anju Sharma submitted a complaint to Judicial Magistrate, Panipat on 10.6.2005 stating therein that her husband Inder Lal Sharma, who was employed as a driver with a truck of a private company had taken the truck to Bombay to transport some goods; that on 10.6.2005, she was informed that the truck/container of her husband had been found abandoned near Naultha bus stand and the tyres, battery of the said vehicle and goods loaded therein had been stolen; that Inder Lal Sharma was not traceable. In the complaint in question, the complainant suspected that her husband might have been killed by some robbers. In the beginning FIR No.73 dated 21.6.2005 was registered with Police Station Israna, District Panipat but subsequently during the course of investigation, it transpired that actual place of crime was located in District Jhajjar. Accordingly FIR No.289 dated 29.7.2005 was registered at Police Station Jhajjar. The investigation in the case started. The dead body of Inder Lal Sharma was recovered from a canal by ASI Rohtas Singh (PW11). He carried out the inquest proceedings qua the dead body preparing a report in that regard. He got the post-mortem examination conducted on the dead body, which was smudged with mud all over and emitting foul smell. Maggots were crawling all

over the body. Eyes, ears, nose, mouth and lips were deformed. Accused Kartar Singh and Vinod were arrested in this case. They were interrogated, during the course of which, they confessed their involvement with regard to murder of Inder Lal Sharma, accused Kartar Singh using iron rod and Vinod wheel *PANA* for doing that and thereafter throwing dead body of Inder Lal Sharma in Sunder Canal Branch and their having robbed 700 bags of plastic *DANA*. The disclosure statements of such accused were recorded and in pursuance thereof, accused Kartar Singh got recovered iron rod from his possession, whereas Vinod got recovered wheel *PANA*. Both the accused on the basis of statements under Section 27 of the Evidence Act made by them got recovered 20 bags each of plastic *DANA*, which according to them, they had robbed from the truck of the deceased. The said bags had been taken into police possession. Further investigation of the case revealed involvement of accused Suresh, Raghubir, Rajender, Jasbir, Vijay, Raj Kumar, Hari Krishan, Dinesh and Radhey Shyam, who were arrested in this case and they confessed their involvement in the case. They had got recovered plastic *DANA* from their possession as disclosed by them in their respective statements.

On presentation of challan in the Court of learned Chief Judicial Magistrate, Jhajjar, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offences under Sections 302 and 201 IPC

are exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Jhajjar vide his order dated 8.11.2005 committed the case to the Court of learned Additional Sessions Judge-1, Jhajjar.

On receipt of case in the Court, learned Additional Sessions Judge, Jhajjar, observing that prima facie charge for offences under Sections 302/392/411 and 201/120-B IPC against accused Vinod and Kartar Singh and charge under Sections 411 and 201/120-B IPC against accused Raghubir and charge under Section 411 IPC was disclosed against accused Rajender, Suresh, Dinesh, Raj Kumar, Hari Kishan, Vijay Kumar, Jasbir and Radhey Shyam directed that the accused be charge-sheeted accordingly. Charge was framed, to which, the accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as twenty two witnesses i.e. PW1 Anju Sharma, PW2 Hari Kishan, Patwari, PW3 Anil Kumar, PW4 Constable Subhash Chander, PW5 Constable Sunil, PW6 Atma Ram, Tehsildar, PW7 EHC Krishan Kumar, PW8 Constable Surender Kumar, PW9 Sant Kumar ASI, PW10 Dr.Vijay Pal Khanagwal, PW11 ASI Rohtas Singh, PW12 EHC Sumer Singh, PW13 ASI Ram Chander, PW14 Jagdish Chander, ASI, PW15 Inspector Ram Kumar, PW16 ASI Chandergupt, PW17 SI Pawan Kumar, PW18 SI Dayanand, PW19 Ram Niwas, PW20 Satbir, PW21 Partap Singh, Retd.DSP and PW22 Inspector Pardeep Kumar.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Accused did not lead any evidence in their defence.

After hearing arguments, learned trial Court convicted and sentenced the accused Kartar Singh and Vinod as mentioned supra, whereas acquitted co-accused Raghubir, Rajinder, Vijay Kumar, Hari Kishan, Raj Kumar, Dinesh Kumar and Radhey Shyam, which left accused Kartar Singh and Vinod aggrieved and they have filed the present appeals praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the parties besides going through the record and we find that the impugned judgment of conviction and order of sentence passed by the trial Court are not sustainable and are bound to be set aside for the following reasons:

It is a case of circumstantial evidence and no direct evidence is available connecting the appellants/accused/convicts with the crime. In such an eventuality, the chain of events must be complete and if any vital link in the chain is missing, then the case of prosecution is not taken to be proved. A strong motive should

also be established in such type of cases. In the instant case, we find vital links missing. The only evidence which can be taken to be incriminating against the accused is the recovery of weapons and bags of plastic *DANA*. As regards the confessional statements said to have been made by accused Vinod and Kartar Singh before the police, those are not admissible in view of Section 25 of the Evidence Act being statements made by the accused in custody before the police officer. With respect to the iron rod got recovered by accused Kartar Singh and wheel *PANA* got recovered by accused Vinod in pursuance of the disclosure statements made by them, even if it is taken that such accused had made disclosure statements and got such articles recovered, there is nothing to show that such articles had in fact been used by them in committing murder of Inder Lal Sharma. Those articles had not been sent to FSL, Madhuban to find out as to whether they had stains of human blood. Therefore, recovery of such articles from these two accused is not much material.

As regards recovery of bags of plastic *DANA*, the prosecution has not been able to show that those bags were in fact the same, which had been taken away from the truck of Inder Lal Sharma having status of stolen/robbed articles. Even if, it is taken that those bags formed part of consignment loaded in the truck of deceased that could be a strong incriminating evidence against the accused but not enough by itself to prove charge of prosecution

against the accused.

It has also to be taken note of that it is not established on the record conclusively that the dead body recovered was of Inder Lal Sharma. According to the prosecution the dead body was in pretty bad shape and was at advanced stage of decomposition and when the complainant saw copper ring at Police Station Bawani Khera, she identified it to be pertaining to her husband. This cannot be said to be proper and complete identification and it is not fully established on record that the dead body recovered was of Inder Lal Sharma. PW1 Anju Sharma in her cross-examination stated that the copper ring, which was shown to her was a simple one and such like rings are easily available in the market. PW3 Anil Kumar though stated that on coming to know from Israna police that some unknown dead body had been recovered, they went to village Zamalpur and identified the dead body Inder Lal Sharma by seeing the photographs of dead body along with some belongings i.e. ring, which was recovered by police of Bawani Khera, Police Station. In his cross-examination, he stated that neither the police had informed him regarding any dead body 5-6 months ago nor he had identified the same. Thus, there was no proper identification of the dead body.

The settled principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt and such burden of proof is stationary

on the prosecution. In this case, the prosecution has failed in its endeavour to do so.

The prosecution has been unable to prove that the appellants/accused/convicts had committed the murder of Inder Lal Sharma and had robbed the plastic *DANA* bags, which he was carrying in his truck at the time of his death or that they threw the dead body of Inder Lal Sharma in Sunder Canal Branch with an intention to make evidence of murder disappear and to screen themselves from legal punishment or that they had dishonestly received or retained the stolen property knowing it to be stolen. It is also not proved that the accused/convicts had hatched any conspiracy to commit any crime. There is no cogent and convincing evidence to show that the bags of plastic *DANA* got recovered by Vinod and Kartar Singh come within the definition of stolen property since there is no enough evidence to show that those bags are out of bags, which were being transported in the truck in question. Therefore, essential ingredients of Section 411 IPC are also not established.

The trial Court clearly fell in error in coming to the conclusion that charge against accused Vinod and Kartar Singh stood proved, whereas it was not so and a big question mark crops up over truthfulness of the prosecution story. As a matter of fact, the prosecution had been unsuccessful in proving its charge against the accused Kartar Singh and Vinod but the trial Court by

misappraisal of evidence and misinterpretation of law wrongly came to the conclusion otherwise. The prosecution had been unable to prove its charge against the accused Vinod and Kartar Singh beyond a shadow of reasonable doubt.

Therefore, the appeals so filed on behalf of appellants/accused/convicts Vinod and Kartar Singh are accepted. The impugned judgment of conviction and order of sentence under appeals qua them as a result thereof are set aside. The appellants – accused Vinod and Kartar Singh are acquitted of the charge for which they have been held guilty and convicted vide the impugned judgment.

The appellants/accused Vinod and Kartar Singh, who are stated to be in custody are directed to be released forthwith, if not required in any other case.

Necessary information be sent to the quarter concerned.

29.11.2018	(A.B.CHAUDHARI)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No