

CRA-D-44-DB of 2012(O&M);
CRA-D-73-DB of 2012(O&M); and
CRA-D-261-DB of 2012(O&M)

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

(1) **CRA-D-44-DB of 2012(O&M)**
Upkar Hans alias Vicky
...Appellant

Versus

State of Punjab
...Respondent

(2) **CRA-D-73-DB of 2012(O&M)**
Rajiv Kumar @ Lucky
...Appellant

Versus

State of Punjab
...Respondent

(3) **CRA-D-261-DB of 2012(O&M)**
Deepak @ Gian
...Appellant

Versus

State of Punjab
...Respondent

Date of decision:-30.10.2018

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

Present : Mr.T.S. Chauhan, Advocate and
Mr.Satnam Chauhan, Advocate
for the appellant in CRA-D-44-DB of 2012.

Mr.Krishan Singh Dadwal, Advocate
for the appellant in CRA-D-73-DB of 2012.

Mr.Gurmeet Singh, Advocate
for the appellant in CRA-D-261-DB of 2012.

Mr.Ankur Mittal, Advocate (Amicus Curiae)
in CRA-D-73-DB of 2012 and CRA-D-261-DB of
2012.

Mr.I.P.S. Doabia, Additional Advocate General,
Punjab.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of three appeals i.e. **CRA-D-44-DB of 2012** filed by Upkar Hans alias Vicky, CRA-D-73-DB of 2012 filed by Rajiv Kumar @ Lucky and CRA-D-261-DB of 2012 filed by Deepak @ Gian, all accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Hoshiarpur for the offence under Section 460 IPC, whereas their co-accused Sunny was acquitted, vide impugned judgment dated 14.12.2011 and vide order of the said very date, they Upkar Hans alias Vicky, Rajiv Kumar @ Lucky and Deepak @ Gian were sentenced as follows:

Offence under Section	Sentence Awarded
Section 460 IPC	Imprisonment for life and to pay a fine of Rs.15,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of two years.

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 on the intervening night of 10/11.8.2007, an elderly couple namely Gurmail Singh and Amarjit Kaur was murdered at their residence in the area of near Gurudwara Tibba Sahib, Hoshiarpur and several articles were stolen from their house. Ms. Atma Kaur wife of Mohinder Singh living in their neighbourhood informed the complainant Balbir Singh working as *Sewadar* in Gurudwara Tibba SahiB, Hoshiarpur on 11.8.2007 in the morning and Balbir Singh in turn got his statement recorded with SI Sukhwinder Singh from Police Station Model Town, Hoshiarpur, who along with other police officials on getting information regarding the incident had reached the spot. On the basis of statement of complainant Balbir Singh, formal FIR was recorded. The investigation in this case took place. One Surinder Kumar, Municipal Commissioner, resident of Purhiran, Hoshiarpur

contacted the police and informed that Munish Kumar, Upkar Hans @ Vicky, Rajiv Kumar @ Sunny, Deepak and Sunny had approached him confessing their involvement in the incident. Accused Munish Kumar, Upkar Hans @ Vicky, Rajiv Kumar and Deepak were arrested in this case.

On 27.4.2008, accused Rajiv Kumar @ Lucky while in police custody had suffered a disclosure statement and in pursuance thereof got recovered a gold locket from his residential house, which was taken into police possession.

Accused Upkar Hans @ Vicky also made a statement under Section 27 of the Evidence Act to the police and in pursuance thereof got gold ring recovered from Almirah in his house, which was seized by the police, whereas on 1.5.2008 accused Munish Kumar had got recovered one motorcycle LML Eterno bearing No.PB-07-R-3808, which was taken into possession by the police party.

On 4.5.2008 accused Munish Kumar @ Mesha also made a statement under Section 27 of the Evidence Act before the Investigating Officer and got recovered a passport alongwith three pound sterling of denomination of 10 and two pound sterling of the denomination of one, which were seized by the police.

After completion of investigation and other formalities, challan against accused Munish Kumar, Upkar Hans @ Vicky, Rajiv Kumar and Deepak was prepared and filed in the Court. After

commitment proceedings, the case was assigned to Additional Sessions Judge, Hoshiarpur, who framed formal charge for offences under Sections 460 and 396 IPC against the accused, to which, they pleaded not guilty and claimed trial.

During the proceedings Munish Kumar was found to be juvenile and he was forwarded to Juvenile Justice Board, Hoshiarpur for being tried as a juvenile. Supplementary challan was filed against accused Sunny Kumar and then amended charge for the offences under Sections 460, 396 IPC was framed accused Upkar Hans, Rajiv Kumar, Sunny Kumar and Deepak.

During the course of its evidence, the prosecution examined as many as seventeen witnesses i.e. PW1 Ram Singh, Draughtsman, PW2 Pawan Kumar, PW3 HC Bhagwant Lal, PW4 Dr.Jaswinder Singh, PW5 Surinder Kumar, PW6 Atma Kaur, PW7 Vijay Singh, PW8 HC Raj Kumar, PW9 HC Ram Dass, PW10 ASI Tarsem Singh, PW11 Kulwant Singh, PW12 Balbir Singh, PW13 HC Rakesh Kumar, PW14 SI Anil Kumar, PW14 SI Anil Bhanot, PW15 HC Nirmal Singh, PW16 ASI Baldev Singh and PW17 Inspector Sukhwinder Singh.

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 Upkar Hans @ Vicky, Rajiv Kumar and Deepak Kumar as mentioned supra, whereas acquitted accused Sunny Kumar, which left accused Upkar Hans, Rajiv Kumar and Deepak Kumar 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 has to be kept in mind that there is no eye-witness of the occurrence and the entire case is based upon circumstantial evidence. The law is well settled that if a case rests upon circumstantial evidence, then the chain of the events must be complete and if any vital link in the chain is missing, then that cannot lead to proof of case of the prosecution beyond a shadow of reasonable doubt.

In the instant case, the most important witness for the prosecution was PW5 Surinder Kumar before whom, the accused had allegedly made extra judicial confession. However, such

witness, namely, PW5 Surinder Kumar did not toe the line of the prosecution and rather stated that in the year 2007, he was Municipal Commissioner of Municipal Committee, Hoshiarpur, however, he does not know Munish Kumar, Upkar Hans @ Vicky, Rajiv Kumar @ Lucky, Deepak @ Gian and Sunny and that they never came to him or confessed any guilt before him. He was declared a hostile witness at the instance of the Public Prosecutor and Public Prosecutor was permitted to put questions to him in the form of cross-examination but lengthy cross-examination by the Public Prosecutor failed to get any reply from his mouth, which might have been favourable to the prosecution. Thus PW5 Surinder Kumar not supporting the prosecution story gives a severe jolt to the prosecution case.

As regards evidence in the form of recovery of articles from possession of the accused, again that evidence cannot be taken as incriminating against the accused for the reason that there is nothing to show that articles so recovered were in fact belonging to the deceased and had been taken away by the accused during the incident. No person from the family of the deceased or any acquaintance or friend turned up to identify the articles recovered from the accused to be the same ones, which had been taken away from the house of deceased during the incident. Therefore, such articles cannot be taken to be stolen articles and the prosecution being unable to connect those articles with the deceased, the

possession thereof by the accused, even if proved, does not constitute any incriminating evidence against the accused. The remaining evidence adduced by the prosecution is only of corroborative type.

PW1 Ram Singh, Draughtsman had just prepared scaled site-plan of the spot on 27.6.2008.

PW2 Pawan Kumar had shown ignorance being acquainted with accused Munish Kumar @ Mehsha earlier. He was declared a hostile witness at the instance of Additional Public Prosecutor.

PW3 HC Bhagwant Lal happened to be a formal witness, who had tendered in evidence his affidavit Ex.PB.

PW4 Dr.Jaswinder Singh had provided the medical evidence deposing that on 11.8.2007 while posted at Civil Hospital, Hoshiarpur, he had conducted post-mortem examination on the dead body of Amarjit Kaur. He stated that he had found red contusion 8 x 5 cm on her right cheek. He further stated that on the same date, he had also conducted post-mortem examination on the dead body of Gurmail Singh. He further stated that ligature material with two curls tied around the upper half of neck all around transversely was present on the dead body of Gurmail Singh and in both the cases, he stated that in his opinion the cause of death was asphyxia due to strangulation, which was ante-mortem and sufficient to cause death in the ordinary course of nature.

The testimony of PW5 Surinder Kumar has been discussed above.

PW6 Atma Kaur living in neighbourhood of the deceased just stated that on 11.8.2007 at about 8/9:00 a.m. in the morning, she went to the house of the deceased and found that both of them were lying dead; then she went to Gurudwara Sahib and informed Balbir Singh - Sewadar; then Balbir Singh and Karamjit Singh came to the house of the deceased and informed the matter to the police. Her testimony is also having much relevance so as to determine the guilt of the accused.

PW7 ASI Vijay Singh, who was member of the police party headed by SI Anil Kumar before whom accused Rajiv Kumar @ Lucky, Upkar Hans @ Vicky and Deepak had suffered disclosure statements and got the articles recovered deposited in that regard. He further deposed that on 4.5.2008, accused Munish Kumar @ Mesha has also suffered a disclosure statement and got passport and dollars recovered from his residential house, which had been taken into possession.

PW8 HC Raj Kumar, Photographer deposed regarding taking of photographs from the spot on 11.8.2007 and thereafter handing over such photographs to the Investigating Officer.

PW9 HC Ram Dass and PW10 ASI Tarsem Singh happened to be more or less formal witnesses.

PW11 Kulwant Singh stated that on 11.8.2007 at about

10:30/11:00 a.m., he had received a telephonic message about death of Gurmail Singh and Amarjit Kaur; he went to the house of the deceased, identified their dead bodies and had signed the inquest reports.

PW12 Balbir Singh deposed regarding his reporting the matter to the police.

PW13 HC Rakesh Kumar, who had gone to the place of occurrence in connection with investigation of the case, similarly PW14 SI Anil Kumar, who had carried out investigation in this case partly, deposed in that regard.

Similarly, the remaining witnesses examined by the prosecution does not help it in advancing its case.

The trial Court clearly fell in error in coming to the conclusion that charge against accused Upkar Hans, Rajiv Kumar and Deepak Kumar stood proved, whereas it was not so and a big question mark arose over truthfulness of the prosecution story. As a matter of fact, the prosecution had been unsuccessful in proving its charge against the accused 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 beyond a shadow of reasonable doubt. The trial Court by misappraisal of the evidence and erroneously misinterpretation of law came to the conclusion that the charge against the accused stood proved, which conclusion is not

sustainable and is liable to be set aside.

Therefore, the appeals so filed on behalf of appellants/accused/convicts 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 Upkar Hans alias Vicky, Rajiv Kumar @ Lucky and Deepak @ Gian are acquitted of the charge for which they have been held guilty and convicted vide the impugned judgment.

The appellants/accused Upkar Hans alias Vicky, Rajiv Kumar @ Lucky and Deepak @ Gian, 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.

30.10.2018
Brij

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

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