

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal-D No.479-DB of 2018 (O&M).
Date of Decision: November 15, 2018

Satyawan and anotherAppellants

versus

State of HaryanaRespondent

**CORAM: HON'BLE MR.JUSTICE RAJEEV SHARMA.
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU.**

Present: Mr.Arun Kumar Bakshi, Advocate and
Mr.Surender Lamba, Advocate, for the appellants.
Mr.S.S.Pannu, Deputy Advocate General, Haryana.

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Rajiv Sharma, J.

Though the application was listed for suspension of sentence but with the consent of learned counsel for the parties, the main appeal itself is heard on merits.

[2] This appeal is instituted against the judgment dated 21.02.2018 rendered by Additional Sessions Judge, Charkhi Dadri in Sessions Trial No.35 of 03.02.2017, whereby the appellants were charged with under Section 302 read with Section 34 of IPC. They were convicted and sentenced to undergo RI for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, they were sentenced to undergo six months' simple imprisonment.

[3] The case of the prosecution in nutshell is that on 04.01.2017 a message was received in Police Station by MHC. MHC Police Station Badhra informed Sub Inspector Om Parkash-PW-12 that in village Chandwas, Sandeep has been murdered with an axe. Sub Inspector Om Parkash reached at the place of occurrence and met with Satish

complainant-PW-7. According to the contents of application dated 04.01.2017, Sandeep, Satyawar and Neeraj quarreled at bus stop. Vikas-PW-3 informed the complainant Satish (PW-7). They proceeded towards the spot. When he reached Gulhi Wali Gali, he noticed that Satyawar and Neeraj were coming armed with Kulharis (axes). Satyawar and Neeraj attacked Sandeep. Satyawar gave Kulhari blow on his head. Neeraj gave a Kulhari blow on waist. Sandeep collapsed. He raised alarm. Rainku-PW-8 came on the spot. Thereafter Satyawar and Neeraj fled away alongwith their weapons. Sandeep died on the spot. FIR was registered by ASI Satish Kumar-PW-5. Post mortem of the dead body was conducted and challan was produced after completing all the codal formalities.

[4] The prosecution has examined number of witnesses. Statements of the appellants under Section 313 Cr.PC. were also recorded. They denied the case of the prosecution. The appellants were convicted, hence this appeal.

[5] Learned counsel for the appellants vehemently argued that prosecution has failed to prove the case against the appellants. Learned State counsel supported the judgment dated 21.02.2018.

[6] We have heard learned counsel for the parties at a considerable length and gone through the judgment carefully.

[7] PW-1 Dharmender Singh, Draftsman has proved the site plan exhibit PW-1/A. PW-2 Manish Kumar testified that he came to know about the injuries suffered by Sandeep. He reached Gulhi Wali Gali. He noticed that Sandeep was lying in injured condition. The assailants have already left the place of occurrence. PW-Satish and Rainku were not present at the spot.

PW-3 Vikas did not support the case of the prosecution. He was declared

hostile. PW-5 ASI Satish Kumar recorded the FIR. According to him, Satyawar made disclosure statement. Neeraj also made disclosure statement Ex.P4. On the basis of disclosure statement, weapons of offence, i.e., axes were recovered. PW-7 Satish Kumar complainant and PW-8 Rinku did not support the case of prosecution. They were declared hostile. Post-mortem was conducted by PW-10-Abhivind. He proved the same as Ex.PW-10/B. The cause of death, according to post-mortem report is due to haemorrhage and shock caused by injuries which were ante-mortem in nature and sufficient to cause death in normal course.

[8] Statements of witnesses under Section 161 Cr.P.C. were recorded and complaint was lodged by complainant PW-7-Satish. PW-7 did not support the case of the prosecution. The deceased was his real brother and according to him, he was not present at the spot. He was declared hostile. Similarly, PW-3-Vikas and PW-8 Rainku also did not support the case of the prosecution. They were also declared hostile. In the case of circumstantial evidence, motive plays an important role. The prosecution has not led any evidence to prove the motive. The material witness is PW-7 Satish Kumar. Satish Kumar-complainant has not supported the case of the prosecution. There is gap in the prosecution story. The prosecution has failed to prove the case against the appellants beyond a reasonable doubt. In the case of circumstantial evidence, complete chain must be there. All the independent witnesses have not supported the case of prosecution.

[9] Their Lordships of Hon'ble Supreme Court in ***Dandu Jaggaraju vs. State of Andhra Pradesh, (2011) 14 Supreme Court Cases 674*** have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution.

Their Lordships have held as under:-

9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.

[10]. Their Lordships of Hon'ble Supreme Court in *Pudha Raja and another vs. State, represented by Inspector of Police, (2012) 11 Supreme Court Cases 196* have held that the motive assumes great significance and importance in case of circumstantial evidence and absence of motive puts court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. Their Lordships have held as under:-

16. Furthermore, in such a case, motive assumes great significance and importance, as the absence of motive puts the court on its guard and causes it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. The evidence regarding existence of motive which operates in the minds of assailants is very often, not known to any other person. The motive may not even be known, under certain circumstances, to the victim of the crime. It may be known

only to the accused and to none other. It is therefore, only the perpetrator of the crime alone, who knows as to what circumstances prompted him to adopt a certain course of action, leading to the commission of the crime.

[11] Their Lordships of Hon'ble Supreme Court in ***Rishi Pal vs. State of Uttarakhand, (2013) 12 Supreme Court Cases 551*** have held that while motive does not have a major role to play in cases based on eye witness account of incident, it assumes importance in cases that rest entirely on circumstantial evidence. Their Lordships have further held that essence of requirements that must be satisfied in cases resting on circumstantial evidence is that not only should circumstances sought to be proved against the accused be established beyond reasonable doubt, but also that such circumstances form so complete a chain, as leaves no option for court, except to hold that accused is guilty of offences with which he is charged. Their Lordships have held as under:-

“14. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was

difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs.15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See Sukhram v. State of Maharashtra (2007) 7 SCC 502, Sunil Clifford Daniel (Dr.) v. State of Punjab (2012) 8 SCALE 670, Pannayar v. State of Tamil Nadu by Inspector of Police (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.

19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased- Abdul Mabood. In doing so the trial Court over looked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does not require any reiteration. The decisions of this Court

have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered.”

[12] Accordingly, the appeal is allowed and the judgment dated 21.02.2018 is set-aside. The appellants are ordered to be released forthwith, if not required in any other case. Registry is directed to prepare the release warrants forthwith.

[RAJEEV SHARMA]
JUDGE

November 15, 2018
mohinder

(HARINDER SINGH SIDHU)
JUDGE

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