

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

Crl. Appeal No.D-751-DB of 2003 (O&M)
Date of Decision: March 09, 2018

Ram Bhagat and another

...Appellants

VERSUS

State of Haryana

...Respondent

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

Present: Ms.Rivayat Hayer, Advocate
for the appellants.

Mr.Ashok Mutreja, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants challenging the judgment of conviction dated 05.08.2003 and order of sentence dated 07.08.2003 passed by learned Sessions Judge, Bhiwani, whereby they were convicted under Sections 302/34, 452 and 404 IPC and sentenced to undergo imprisonment for life under Section 302/34 IPC along with other sentences and fine. All the sentences were ordered to run concurrently.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Manoj Kumar, who got recorded his statement to ASI Raj Singh, SHO on 08.01.2000. Complainant Manoj Kumar stated that they are two brothers and live together. His father Hawa Singh runs a shop of grocery in the village and he used to bring liquor from

Tosham un-authorizedly and sell in the village and he also used to take liquor and sleep in the shop. Complainant further stated that in the evening, they used to take food for his father at the shop. On 07.01.2000, at about 10.00 p.m., his father came to him in the house and told that Suresh and Ram Bhagat quarreled with him under the influence of liquor. Then complainant and his younger brother Raj Kumar accompanied his father and went to their shop. On seeing them, said persons fled away. Thereafter, he and his brother came back to the house as some guests had come to their house whereas, his father remained at the shop. Complainant also stated that on 08.01.2000 at about 7.00 a.m., he went to the shop of his father and found his father lying dead on the cot. Thereafter, he came back and disclosed the entire incident to his uncle Kanni Ram. His uncle also went to the shop and saw the dead body of his father. It is further stated by the complainant that about 20-25 days earlier also, a quarrel had taken place between his father and Suresh and Ram Bhagat under the influence of liquor regarding some money transaction. On the previous night also, Suresh and Ram Bhagat had given beatings to his father in the shop, as a result of which, he received invisible injuries and died. On the basis of this statement, ruqa was sent to the police station, on the basis of which, FIR was registered. Thereafter, ASI Raj Singh, Investigating Officer, reached the spot and prepared inquest report Ex.PH. He also recorded the statements of the witnesses. The dead body was sent for post-mortem examination. Rough site plan was prepared. Accused were arrested. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of challan and other

Cr.P.C. Finding prima facie case, the appellants were charge-sheeted under Sections 302 read with Section 34 IPC, 454 and 404 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Head Constable Hari Singh, who deposed regarding handing over the Special Report to Illaqa Magistrate. PW-2 Constable Om Parkash, is a formal witness, who tendered into evidence his affidavit Ex.PB. PW-3 UDC Hawa Singh mainly brought the summoned record. PW-4 Head Constable Ajit Singh deposed regarding recording of FIR Ex.PA. PW-5 Dr.N.K.Chaudhary, conducted post-mortem examination on the dead body of Hawa Singh and gave his observation as under:-

No ligature mark around the neck. The body was moderately built, wearing gray colour pyjama & kurta and white banyan. Rigor mortis present. Eyes closed. Lips and tongue cynosed, and congested. Body was having multiple reddish contusion of varying size present on the abdomen below the umbilicus and both right and left flanks of abdomen. On cutting skin underlying tissue infiltrated with blood. On opening the abdomen, abdominal cavity was containing about 100 cc of blood. Most of the small intestine is heavily contused and one-two places lacerated. On cutting the intestine, mucous membrane congested. Multiple haemolytic spots seen. Both kidneys were highly congested and on dissection multiple haemorrhagic spots were seen on both the kidneys. Right lung and left lung were also congested. Others were normal.

In the opinion of the doctor, the cause of death in this case was due to shock and haemorrhage, as a result of injuries to both kidneys and intestines. All the injuries were ante-mortem in nature. PW-6 Head Constable Ramdhari, is also formal witness, who tendered into evidence his affidavit Ex.PJ. PW-7 Som Parkash Arora, Draftsman, mainly proved the

scaled site plan Ex.PK. PW-8 Manoj Kumar, complainant, deposed as per prosecution version. PW-9 Raj Kumar, brother of the complainant, has deposed regarding the prosecution version. PW-10 ASI Raj Singh, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. PW-11 Mohan Dass, Welfare Inspector deposed regarding disclosure statements suffered by the accused and recoveries in pursuance of disclosure statements.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. They further deposed that they have been falsely implicated due to party faction and it was a blind murder. In defence, accused-appellants examined DW-1 Bir Singh son of Hem Raj, who deposed that he knew Ram Bhagat, who is a truck driver. He further deposed that Ram Bhagat was driver on the truck belonging to Rajender and he was conductor on that truck. On 07.01.2000, they went to Delhi having grains loaded in the truck from Rajgarh. They stayed at Delhi during night. On the next day, they returned to Rajgarh and thereafter to their village and they came to know that Hawa Singh had died. DW-2 Bir Singh son of Harphul Singh deposed that accused are his real brothers. Ram Bhagat was driver in Rajgarh on the truck of Rajender. He further deposed that accused Suresh was not arrested by the police in his presence. He also deposed that he signed on Ex.DA in the court compound on the asking of Thanedar.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Aggrieved from the above-said judgment of conviction and

order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that it is a case of circumstantial evidence but the chain of circumstances is not complete. There is no extra judicial confession in the present case. She further argued that the last seen evidence also cannot be believed because as per prosecution version, deceased Hawa Singh used to bring liquor and used to sell the same on his shop, which means that so many persons used to come to shop for taking liquor and in no way, it can be held that after the accused were seen with the deceased, no other person came there. She next contended that in the case of circumstantial evidence, motive is significant. In the present case, there is no strong motive to commit murder of Hawa Singh by the present appellants. Even if it is taken that a scuffle took place while taking liquor, even then, it cannot be held as motive to cause the murder. It is further argued by learned counsel for the appellants that even the recoveries stated to be effected on the disclosure statements made by the accused-appellants, are planted upon them. There is no mention in the FIR i.e. first version that golden ring or purse of Hawa Singh has been taken away. Secondly, even the brother of the complainant has stated that the golden ring which was got recovered, was of complainant Manoj Kumar. Learned counsel for the appellants, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved. There was scuffle between the accused and deceased in the evening and that is the motive for causing the occurrence. He further argued that golden ring and purse have been

recovered as per disclosure statements suffered by the accused, which also connect the appellants with the crime. He next argued that prosecution has duly proved the guilt of the accused beyond reasonable doubt. There are no material contradictions or improvements in the statements of the PWs. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

We have heard learned counsel for the appellants as well as learned State counsel and have gone through the record minutely and carefully.

From the record, we find that, admittedly, it is a case of circumstantial evidence. It is settled law that in the case of circumstantial evidence, the chain of circumstances should be complete in such a way, that it point towards the guilt of the accused only and none else. It is also settled law that in the case of circumstantial evidence, the motive is of utmost significance. In the present case, firstly, there is no strong motive to cause the occurrence. Even if it is taken that while taking liquor, the accused have some scuffle with Hawa Singh deceased, in no way, it can be held as motive to commit murder of the deceased. Secondly, in the present case, there is no extra judicial confession by the accused. Thirdly, the last seen evidence is also weak type of evidence. Even if it is taken that in the evening there was some scuffle between the accused and deceased and accused were present on the shop of Hawa Singh but at the same time, it is the case of the prosecution that Hawa Singh used to bring liquor and sell the same in the village, which means that there is every possibility that other persons also used to come to the shop of Hawa Singh to take liquor etc. In no way, it can be held that no other person came on the shop of Hawa Singh after the

accused were seen scuffling with the deceased.

As regarding recoveries, we find that though Manoj Kumar complainant, in his statement, has stated that the ring belonged to his father, which was given to his father by his (complainant) in-laws in his marriage but PW-9 Raj Kumar, who is brother of the complainant, has stated in his cross-examination that ring belonged to his brother Manoj Kumar. Further, we find that the electricity bill is stated to have been recovered as per the disclosure statement suffered by the accused but it is in the evidence that shop was not having electricity connection. Moreover, from the statement of Manoj Kumar, we find that it is in his chief examination that on 07.01.2000 at about 10.00 p.m., his father came to him and informed that Suresh and Ram Bhagat, were quarreling with him while consuming liquor. Thereafter, Manoj Kumar along with his younger brother Raj Kumar accompanied his father to the shop and on seeing them, accused Suresh and Ram Bhagat fled away, which means that nobody has seen them lastly with the deceased. At that time, they fled away from the spot. As to who came later on to the shop and as to who caused the occurrence, there is no evidence on record.

In no way, from these circumstances as discussed above, we can say that chain of circumstances is so complete that it is pointing towards the guilt of the accused only and none else. A reasonable doubt exists in the prosecution version and benefit of doubt always goes to the accused. Therefore, by giving benefit of doubt, accused-appellants Ram Bhagat and Suresh are acquitted of the charges framed against them.

In view of the above discussion, we find that the impugned judgment of conviction dated 05.08.2003 and order of sentence dated 07.08.2003, passed by learned Sessions Judge, Bhiwani, are not as per

evidence and law and the same are set aside.

Therefore, finding merit in the appeal, the same is allowed.

Since appellants Ram Bhagat and Suresh, are on bail, their bail/surety bonds stand discharged.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 09, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No