

374 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CRA-D-770-DB of 2003 (O&M)
Date of Decision: 27.11.2019

Sunil Sharma and anotherAppellants
VS.
State of HaryanaRespondent

(2) CRR No. 18 of 2004 (O&M)

Vikram Singh @ VickeyPetitioner
VS.
State of Haryana and othersRespondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr.Justice H.S.Madaan.

Present : Mrs. Baljeet Mann, Advocate,
for the appellants in CRA-D-770-DB-2003.

Mr. Amit Jaiswal, Advocate for
Mr. S.S. Siao, Advocate,
for the petitioner in CRR-18-2004.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

The captioned appeal has been preferred against the
judgment dated 02.09.2003 and order dated 04.09.2003 passed by
Sessions Judge, Kurukshetra, vide which the accused/appellants were
convicted and sentenced as under:-

Manwar @ Manohar

Offence	Sentence	Fine	In default
302/34 IPC	Imprisonment for life	Rs.2000/-	RI for 6 months

Naresh @ Kalu and Sunil Sharma

Offence	Sentence	Fine	In default
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302/34 IPC	Imprisonment for life	Rs.2000/-	RI for 6 months
392 IPC	RI for 2 years	Rs.500/-	RI for 2 months

CRR-18-2004 has been filed by the complainant against the acquittal of accused Prithvi Raj and inadequacy of sentence awarded to the remaining three accused/appellants.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Complainant Vikram Singh @ Vikki is son of deceased Baldev Singh resident of Ladwa. The accused are also residents of Ladwa. The complainant has two brothers Paramvir Singh and Lakhwinder Singh and a sister Kamal. The complainant is the eldest child of his parents. His sister Kamal was student of 10+1 class. Accused Sunil Sharma, Brahman by caste, is neighbour of the complainant, who is Rahatwan Sikh by caste. For about three months before the occurrence, Sunil accused had been teasing complainant's sister Kamal. Complainant party counselled the said accused many times but he did not refrain from teasing Kamal. To save family honour, the matter was not disclosed to anybody.

On 12.01.2001 the complainant, his father Baldev Singh, grandfather's younger brother Hakam Singh and complainant's brothers Paramvir Singh and Lakhwinder Singh were present at home, when at about 4.00 P.M accused Sunil, Manwar alias Manohar and Naresh Kumar alias Kalu came there with cricket wickets. Sunil accused remarked that he had come to teach the complainant party a lesson for preventing him from teasing Kamal. The three accused started abusing. Out of fear the complainant party shut the door of their room. However, all the three accused started knocking at the door and started hurling abuses and while going away they threatened that they would not leave complainant's father

Baldev Singh alive that day.

At about 6.00 P.M, on the same day, Baldev Singh went to market Ladwa for purchasing household goods. He did not return during night. The complainant and his brothers searched for him extensively. On 13.01.2001 the complainant learnt that some unidentified dead body was lying behind Major Petrol Pump. The complainant along with Hakam Singh went there and found that the dead body was of Baldev Singh. From the pocket of the deceased, a purse was missing and also a gold ring of the deceased weighing about half Tola with inscription of letter 'B' was also missing. The complainant fully believed that his father Baldev Singh was murdered by all the above named four accused. So the complainant made statement Ex.PB to Assistant Sub Inspector Rajesh Kumar, Station House Officer of Police station, Ladwa, who along with other police officials had already reached the aforesaid place on being informed by one Manjit Singh shopkeeper that dead body of a Sikh gentleman was lying in front of his shop. Many other persons were also present there. Rajesh Kumar Assistant Sub Inspector made endorsement Ex.PB/1 on the aforesaid statement Ex.PB and sent it to Police Station where FIR Ex.PB/2 was recorded. Statement of Hakam Singh was also recorded. He also made statement similar to that of the complainant. On 14.01.2001 statement of Miss Kamal was also recorded.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court of Area Magistrate. As the offence punishable under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charges under Sections 302 read with Section 34 IPC were framed against all the accused and under Section 392 IPC was framed against accused Sunil Sharma, Naresh Kumar @ Kalu. The accused

pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1, Dr. C.R. Khatri, PW-2 Vikram Singh @ Vikki, PW-3 Sub Inspector Ram Singh, PW-4 Hakam Singh, PW-5 Karnail Singh, PW-6 Inspector/SHO Surender Singh, PW-7 Constable Dalbir Singh, PW-8 Constable Sudeep Kumar, PW-9 HC Shashi Pal, PW-10 ASI Bharat Lal, PW-11 Brij Lal, PW-12 Kamal, PW-13 SI Rajesh Kumar, PW-14 Inspector Lachhman Singh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No witness in defence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted and sentenced the accused/appellants as narrated in the first paragraph of the judgment. However, accused Prithvi Raj was acquitted of the charges framed against him.

Thus, CRA-D-770-DB-2003 has been filed by the accused against the judgment of conviction whereas, CRR-18-2004 has been filed by the complainant seeking conviction of accused Prithvi Raj and death sentence to the remaining accused Manwar @ Manohar, Naresh @ Kalu and Sunil Sharma.

On behalf of the accused/appellants, it is contended there is

no evidence on record to connect the accused/appellants with the alleged commission of crime. There is no direct evidence in the case. The prosecution evidence hinges upon the circumstantial evidence. So far as accused Manwar @ Manohar and Naresh @ Kalu are concerned, they had no motive to kill the deceased. The recovery of purse of the deceased containing water bill and receipt thereof do not establish the guilt of the accused. The extra-judicial confession before PW-5 Karnail Singh is a weak type of evidence.

On the other hand, the learned State counsel contends that the accused had every motive to kill deceased because accused/appellant Sunil had been teasing Kamal, daughter of deceased Baldev Singh for about 3 months before the occurrence. The deceased had counselled the said accused many times but he did not refrain from teasing her, therefore, the accused wanted to take a revenge. The accused have been rightly convicted and sentenced by the learned trial Court.

We have heard the learned counsel for the parties and have gone through the case file.

It is a case based on circumstantial evidence. The oft-repeated principles as laid down in *Hanumant Versus State of Madhya Pradesh (1952) SCR 1091* need not be repeated here. However, the same have to be kept in mind while dealing with a case based on circumstantial evidence. As regards accused, Sunil, there is recovery of brick used for killing the deceased. The brick was blood-

stained. The recovery of brick had been effected in the presence of PW-9 HC Shashi Pal and PW-14 Inspector Lachhman Singh. As per PW-1 Dr. C.R. Khatri, the cause of death was 'coma' as a result of head injury i.e. a bruise of 6 cm x 2 cm on the left tempoprital region with diffuse swelling. There was a sub contusions haemotoma with fracture of temporal bone. Further, accused Sunil had every reason to kill Baldev Singh as he had been warned by the latter from having any sort of relations with his daughter, namely, Kamal. Therefore, the conviction and sentence of accused Sunil Sharma, is hereby maintained.

As regards the other accused, namely, Manwar @ Manohar and Naresh @ Kalu, the only recovery is that of a purse containing water bill and receipt thereof from accused Naresh @ Kalu. It defies the imagination that the accused Naresh @ Kalu would keep with him the incriminating substance i.e. the purse and water bill and receipt thereof. He had every opportunity to destroy the same. Further, he had no motive to kill the deceased. Therefore, accused Naresh @ Kalu is acquitted of the charges framed against him.

So far as the case of accused/appellant Manwar @ Manohar is concerned, except the extra-judicial confession made before PW-5 Karnail Singh, there is no evidence worth the name on the record. We have gone through the statement of Karnail Singh. The witness was declared hostile qua accused Prithvi Raj. The witness is not worthy of credence. His statement does not inspire confidence of

the Court. There is no motive with accused Manwar to commit murder of Baldev Singh. Therefore, accused/appellant Manwar @ Manohar is also acquitted of the charges framed against him.

Now taking up the revision petition filed by the complainant against the acquittal of Prithvi Raj, we have gone through the case file and the records minutely. There is absolutely no evidence against him. He is stated to have made extra-judicial confession before PW-5 Karnail Singh, who was declared hostile qua him. Therefore, accused Prithvi Raj has been rightly acquitted by the learned trial Court.

In view of the above, the appeal filed by Sunil Sharma is hereby dismissed whereas, the appeal filed by accused Manwar @ Manohar and Naresh @ Kalu is accepted.

The revision petition filed by the complainant is also dismissed.

Accused/appellant Sunil Sharma is stated to be on bail. His bail is cancelled. He be got arrested through concerned CJM to serve the remaining part of the sentence.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

27.11.2019
SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No