

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

CRA-D-33-DB-2003 (O&M)

Date of decision: 05.11.2019

Satender

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Vivek Aggarwal, Advocate for
Mr. J.P.S. Sidhu, Advocate for the appellant.

Mr. Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Briefly narrated facts of the case as per prosecution version are that on 01.01.2002 at about 3.00 pm, accused Satender went to the house of complainant Om Dutt at Village Mokhra Rozh, District Rohtak on his tractor and took Rajbir deceased, aged about 27 years, son of Om Dutt along with him. Both of them, then proceeded towards Village Basana on tractor of accused Satender. Since Rajbir did not return home at night or on the next day i.e. 02.01.2002, his father complainant Om Dutt enquired from the accused Satender in that regard. Satender told him that during the previous night, he and Rajbir had taken liquor at Village Kalinga and Basana and then at about 10/11 pm, they had returned to their village and he did not know as to where Rajbir had gone thereafter. Complainant Om Dutt searched for Rajbir during the day but could not

find him. In the evening, he heard some women talking in the street that they had seen one shoe, a vest and T-shirt lying around at a distance of about 1 ½ killa from well of Gokal Moda on the passage leading from Mokhra to Basana. Hearing that, complainant Om Dutt along with his cousin Anand, Samunder Singh and Mahender went to that place and found a shoe of black colour, one vest and a T-shirt lying there. They identified such articles to be belonging to Rajbir, however, it was quite dark by that time and weather was foggy. Nevertheless all three of them went to well and in torch light, they saw that body of Rajbir was floating on water with face downward and one shoe, a sock was also floating on the water. Leaving Anand and Mahender there, Om Dutt along with Samunder Singh returned to their house with the shoe, T-shirt and vest which they had found lying near the passage and informed other members of the family.

On the next day in the morning, while Om Dutt was proceeding towards police station Meham to lodge report regarding the incident, whereas, other members of the family proceeded towards the well with rope (rassi) and basket (tokra). Samunder Singh went to house of his maternal uncle Kapoor Singh at Village Kharanti to meet him regarding the incident. Complainant came across ASI Om Parkash and he got his statement recorded. ASI Om Parkash obtained thumb impression of Om Dutt below that statement and appended his own endorsement and sent ruqa to police station, on the basis of which an entry was made in Daily Diary Report. The police officer then went to the well and got

recovered dead body of Rajbir therefrom. He carried out inquest proceedings with regard to unnatural death of Rajbir, preparing a report in that regard and sent the dead body to PGIMS, Rohtak for the purpose of getting post mortem examination conducted thereon, which was in fact carried out on 03.01.2002 at about 12.50 pm. The doctor had given the opinion that the cause of death was on account of drowning. Viscera of the deceased was put in a container, which was sealed with his own seal by the doctor and it was given to the police.

On 06.01.2002, Samunder Singh got his statement recorded with SI Inder Singh, wherein he stated that his uncle Om Dutt had two sons i.e. Rajbir and Naresh and they were cultivating their land separately. On 01.01.2002 at about 6.00 pm, his uncle Om Dutt had told him that accused Satender had come to their house on a Mahindra tractor at about 3.00 pm. Sandeep and Ashok were also sitting with him on that tractor and they had taken Rajbir with them proceeding towards Village Basana. Rajbir did not return till late night hours. In the morning, Samunder Singh complainant saw Satender standing in front of his house and there he asked him about Rajbir. Satender told him that they had gone to Village Kalinga and had purchased 5 litres of country made liquor in a cane for an amount of Rs.280/-. Some of the liquor had been consumed by them in that village and thereafter all four of them came on their tractor on the road leading from their village Basana to Village Mokhra and when they reached near the well of Gokal Moda, they left Rajbir there at about 1.00 pm and three of them returned to their houses.

Samunder Singh further stated that then he, accompanied by his uncle Anand, Mahender and Om Dutt launched a search for Rajbir, going towards Village Basana and as they had reached at some distance from the well of Gokal Moda, they saw a black shoe, a baniyan (vest) with collar and a bushirt of white colour, the buttons of which were broken and front pocket was torn, lying there. The clothes were having mud stains. They identified the shoe and clothes to be those of Rajbir. They suspected foul play and went to the well and as they looked into it, they saw dead body of Rajbir. One shoe and a sock were also floating on the water. Thereafter, he (Samunder Singh) and Om Dutt returned to their village leaving Anand and Mahender near the well and informed the other members of the family. Om Dutt then proceeded towards police station to inform the police in the morning on 03.01.2002, whereas, he (Samunder Singh) left for house of his maternal uncle Kapoor Singh resident of Village Kaharanti, since he had come to their house a few days earlier and informed that Rajbir had borrowed some money from him and it was not returned and that he was told by Rajbir that money had been paid by him to Satender. Then both went to the house of the accused but Satender failed to return the money and he went to the house of Kapoor Singh for making further enquiry. However, by that time, he returned to the village, the dead body of Rajbir had been taken to PGIMS, Rohtak for post mortem examination and thereafter, it was cremated. They continued making enquiry in the matter and convened panchayats for 2/3 days and when they were not satisfied, then the matter was reported to the police

on 06.01.2002. Such statement was endorsed by SI Inder Singh and it was sent to police station, on the basis of which, formal FIR, copy Ex.PA was recorded. The Investigating Officer then went to the place of incident, where Samunder Singh produced before him a black shoe and a bushirt and a baniyan having some mud stains. Those articles were converted into a sealed parcel and taken into possession, vide recovery memo. The IO prepared rough site plan of the place of incident as Ex.PQ. He recorded statements of witnesses. On return to the police station, he deposited the case property with MHC. MHC produced before SI Inder Singh a black shoe and a sock, which has been deposited with him by ASI Om Parkash earlier on 03.01.2002. Those articles were also converted into sealed parcel and taken into possession, vide recovery memo Ex.PE. It was also deposited with MHC. Later on, the investigation of the case was entrusted to Inspector Dhyan Singh of CIA staff, Rohtak. On 12.01.2002, he came across Hansbir and Pardeep, residents of Village Mokhra, while being present at bus stop Rohtak and both of them produced before him accused Satender, stating that he had made an extra judicial confession before them that he had taken Rajbir with him and after making him dead drunk, he was drowned in the well. Satender was arrested in this case. Statements of Hansbir and Pardeep were recorded. On 13.01.2002, accused Satender was interrogated in the presence of ASI Surat Singh and ASI Sham Narian and he suffered a disclosure statement to the effect that he had made Rajbir dead drunk and then pushed him in the well of Gokal Moda. Some of the clothes were

taken off and were thrown at a place about 1 ½ killas away from the well and other articles were drowned into the well and then in pursuance of that disclosure statement, accused led the police party to the disclosed well and pointed out the well and an identification memo was prepared in that regard. That some water was taken out from the well for the purpose of effecting the recovery of clothes and one pant, one sock and one underwear were taken out from the well. Those clothes were identified by Samunder Singh as belonging to the deceased. The clothes were dried, sealed and taken into possession, vide recovery memo. The IO prepared rough site plan of the place of recovery.

After completion of investigation and other formalities, challan against the accused Satender only was prepared, since the IO could not collect sufficient evidence against other two suspects Ashok and Sandeep. Such challan was filed in the Court of Sub Divisional Judicial Magistrate (SDJM), Meham, who supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that offence under Section 302 IPC was exclusively triable by the Court of Sessions, vide detailed commitment order dated 20.04.2002, committed the case to Court of Sessions and it was assigned to Addl. Sessions Judge (ad hoc) Rohtak.

Finding a prima facie case, charge for offences under Section 302/201 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial.

After the prosecution had examined Samunder Singh as PW1 and Om Dutt as PW2 who had named Ashok and Sandeep as participants in the crime, the Public Prosecutor had moved an application under Section 319 Cr.PC for summoning both of them as additional accused, however, the said application was dismissed by the Court, vide order dated 19.08.2002.

During the course of prosecution evidence, it examined as many as 16 witnesses, as per details below:-

PW1 Samunder Singh, PW2 Om Dutt, PW3 Dr. S.P. Sharma, PW4 Pardeep, PW5 Anand, PW6 HC Phul Kumar, PW7 HC Ved Parkash, PW8 ASI Sham Narain, PW9 ASI OM Parkash, PW10 Kapoor Singh, PW11 Biran, PW12 Udey Singh, PW13 Mahender, PW14 Inspector Inder Singh, PW15 Inspector Dhayan Singh CIA and PW16 SI Inder Singh.

Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to him but he denied the same, contending that he is innocent and has been falsely involved in this case.

During the course of his defence evidence, he examined Jagdish Ex.Sarpanch of his village, who had deposed that on 02.01.2002, he had gone to his field situated near the well of Gokal Moda and as he looked therein, he saw the dead body floating on the water inside the well at about 9.00 am. Thereafter, he had informed father of Rajbir. The police arrived in the village at about 3.00 pm. Dead body was taken out from the well and on 06.01.2002, the police officer took various persons belonging

to the village to the police station including Satender accused.

After hearing arguments, the trial Court had convicted the accused and sentenced him to undergo imprisonment for life and to pay fine of Rs.5000/-, in default of payment of fine to undergo RI for one year.

Satender-accused/convict felt aggrieved by the said judgment and has approached this Court, by way of filing an appeal, notice of which was issued to the State, which has put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

Admittedly, in this case, no direct evidence of the incident is there and the entire prosecution story is based upon circumstantial evidence. The law is well settled that in such an eventuality, the chain of events must be complete and a strong motive must be established on the record. If it is not so, then the conviction of the accused cannot be sustained. In the instant case, there was several missing links in the chain and various factors are there giving rise to a doubt about involvement of the accused in the incident. No strong motive for the occurrence was proved on file. The trial Court ignoring all those facts has wrongly convicted the accused.

First coming to the delay regarding reporting the matter to the police. The incident in this case had taken place on 02.01.2002, whereas, formal FIR was got registered on 06.01.2002 i.e. on the fourth

day of the incident. There is no convincing explanation for such delay. Though, according to the prosecution story, Om Dutt, father of the deceased had reported the incident to the police on 03.01.2002 but no FIR was registered on the basis of such statement. Therefore, delay in reporting the matter to the police with regard to the incident which has not been explained satisfactorily does affect the prosecution case adversely.

Secondly, as regards the motive part, according to the prosecution, the deceased had borrowed a sum of Rs.20,000/- from Kapoor Singh, which he had given to Satender and Satender was not returning that amount and for this reason, he had committed murder of Rajbir. The prosecution had been unable to bring cogent and convincing evidence in that regard. No document in the form of promissory note or receipt or any writing by accused Satender in favour of Kapoor Singh or Rajbir has been proved in evidence. In the absence thereof, these contentions cannot be believed and relied upon. Therefore, motive is not established on the record. The crucial witnesses cited by the prosecution to prove its case i.e. PW11 Biran to show that on the day of incident while he was going to his field and when he had reached near well of Gokul Muda, he heard whispering of some persons and identified voices of Satender and Rajbir, did not support the prosecution story in that regard and rather, stated that he had neither heard the whispering of any person nor identified voice of any person. Similarly, PW12 Udey Singh was examined by the prosecution to establish that on 01.01.2002,

Satender and Rajbir had gone to him and they were having some liquor with them and both of them stayed with him and consumed liquor with him also, led the prosecution down not supporting its version in that regard. He was declared a hostile witness and Public Prosecutor was permitted to cross examine him but without any fruitful result.

PW1 Samunder Singh, a very important witness, though supported the prosecution story on several aspects but had stated that he had not seen any accused going with Rajbir or taking him from his house though he was told so by his uncle Om Dutt.

PW2 Om Dutt had supported the prosecution story on material points. Testimony of SI Inder Singh also does not help the prosecution much and rather it is more or less of formal type. As regards statement of Inspector Dhyan Singh from CIA staff that on 12.01.2002, Hansbir and Pardeep had caused appearance of accused Satender before him stating that he had made extra judicial confession before them that he had taken Rajbir with him and after making him dead drunk had pushed him in the well. This statement does not make much sense. PW Krishan from where the liquor had allegedly been purchased by the accused was given up having been won over by the accused by Public Prosecutor. The alleged extra judicial confession by the accused made before Hansbir and Pardeep is not established on the record convincingly.

PW4 Pardeep had deposed regarding accused coming to him and making extra judicial confession but then he is a near relative of the deceased being his cousin brother. Though, according to him, he was a

member of panchayat of Village Mokra but if his statement is examined in totality, it is doubtful as to whether the accused would have gone to him and confessed his guilt in such a manner. The remaining evidence on the record is mostly of supportive and corroborative type and not directly incriminating against the accused. There are several factual gaps and lacuna in the prosecution story which puts a big question mark over guilt of the accused.

Under the circumstances, benefit of doubt ought to have been given to the accused which was wrongly denied to him. The judgment of conviction and sentence passed by the Court below cannot be sustained, since, it is based upon misappraisal of evidence and misinterpretation of law. The appeal has merit. The same is accepted. Resultantly, the impugned judgment of conviction and sentence passed against the accused is set aside and he is acquitted of the charge framed against him.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

05.11.2019

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