

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

**CRA-D-470-DBA of 2003 (O&M)
Date of Decision: 15.11.2019**

STATE OF HARYANA

.....Appellant

VS.

PARMANAND AND ANR.

.....Respondents

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

**Present : Mr. Vikrant Pamboo, DAG Haryana
for the appellant-State.**

**Mr. A.P.S. Mann, Amicus Curiae,
for the respondents.**

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 20.12.2002 passed by Additional Sessions Judge, Panipat, vide which the accused/respondents were acquitted of the charge in FIR No.244 dated 22.08.1999 registered under Sections 302,201 and 364 read with Section 34 IPC at Police Station Samalkha, District Panipat.

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

“2. The prosecution allegations against the accused persons are that on 22.08.1999, Ram Pal son of Mange Ram, resident of village Naraina, came present in the Police Station and presented application, Ex.PD, mentioning therein that his brother Ramesh used to do

agriculture and he was also member of the Block Simiti and that he had gone with Parmanand (accused) on his motor-cycle at about 5.00 p.m on 26.06.1999 in his presence and that of his father and that he did not turn up: that they searched for him and then they lodged report in the police on 23.07.1999 in Police Station, Samalkha. Then on 15.08.1999 they were told by Billu and Modi resident of Gawalra that Parmanand and Ram Phal (accused) had taken wine with Ramesh at about 8.00/9.00 p.m at Namunda bridge on 26.06.1999. Panchayat was conveyed in the village on 22.08.1999 in which Parmanand and Ram Phal could not give satisfactory explanation and that both of them had killed Ramesh and then on the basis of this application, the present case was registered under Section 364/34 IPC. Then SI Bali Ram went to the spot; inspected the same: prepared rough site plan: recorded supplementary statement of Ram Pal and also statement of Mange Ram. On 25.08.1999, ASI Bali Singh was present alongwith other police personals at Namunda bridge where Suresh and Sita Ram produced both the accused before him and interrogated them and arrested them. He then applied Section 302/201 IPC and sent special report through Rajinder Singh Constable; recorded statements of witnesses. On 26.08.1999 he interrogated Parmanand and Ram Phal, separately who made their separate disclosure statements, Ex.PA and Ex.PB and then accused Parmanand first of all got recovered one motor-cycle Rajdoot make No. HR-06C-3425 from his house which was taken into possession vide memo Ex.PC, attested by witnesses. He also prepared rough site-plan Ex.PC/1 of the place of recovery, then accused Parmanand got recovered one purse containing

identity card Ex.P.1, of Ramesh, deceased as per his disclosure statement which was taken into possession vide memo Ex.PE and prepared rough site plan Ex.PE/1 of the place of said recovery with correct marginal notes. Thereafter Ram Phal accused got recovered one wrist watch, Rico make, Ex.P2, from the disclosed place, which was taken into possession vide memo Ex.PF attested by the witnesses. He also prepared rough site-plan, Ex.PF/1, of the place of said recovery, with correct marginal notes: recorded statements of witnesses. On 10.09.1999, accused Parmanand again made disclosure statement, Ex.PG, that they both had firstly killed Ramesh by throttling and then thrown his dead body into the Delhi Cananl; that on 25.08.1999 both the accused made further disclosure statements, Ex.PH and Ex.PJ offering to give the Nishandehi of the place where they had consumed liquor alongwith deceased and the place from where the dead body was thrown into the Delhi Canal. They both led the police party and gave Nishandehi of the said places vide memo Ex.PK and Ex.PL. He also prepared site plan, Ex.PM in this regard with correct marginal notes; recorded statements of witnesses and after completion of investigation, all the accused were booked for trial under the above said offences by the Station House Officer of Police Station Samalkha.”

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

Charge under Sections 302, 364, 201 read with Section 34

IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, HC Mann Singh, PW-2 SI Rattan Singh, PW-3 complainant Ram Pal, PW-4 Mange Ram, PW-5 Mai Ram, PW-6 Sita Ram, PW-7 SI Bali 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 acquitted the accused/respondents of the charges framed against them.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the State of Haryana.

It is contended by the learned State counsel that the learned trial Court has committed an error in acquitting the accused-respondents. There was sufficient evidence on record to convict the accused. The prosecution had satisfactorily explained delay in lodging the FIR; there was last seen evidence coupled with the confessional statements made by both the accused before PW-6 Sita Ram. The recovery of wrist watch of the deceased at the instance of the accused connects them with the crime and a complete chain is made out which

leads to the irresistible conclusion that the crime has been committed by none else but the accused.

On the other hand, on behalf of the respondents/accused, it is contended by the learned Amicus Curiae that the prosecution case lacks truth and suffers from many defects. The learned trial Court after having found that the prosecution had miserably failed to prove its case has rightly acquitted the accused. The prosecution could not complete the chain of circumstantial evidence.

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 cardinal principles with regard to approach of a Judge in the case of circumstantial evidence as laid down in *Hanumant Versus State of Madhya Pradesh (1952) SCR 1091* are reproduced as under:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

In the light of the aforesaid directives, this Court is called upon to evaluate the evidence led by the prosecution so as to determine

whether the guilt of the accused is established or not. The case of the prosecution hinges upon the testimony of PW-6 Sita Ram before whom both the accused stated to have confessed their guilt. Thereafter, the last seen theory has been propounded by complainant, Ram Pal (PW-3) supported by PW-4 Mange Ram father of the deceased. The third evidence with the prosecution is of recovery of purse containing I-card and wrist watch of the deceased at the instance of the accused.

As it emerges from the record, there is inordinate delay of one week in lodging the FIR after having learnt about the identity of the accused from Modi and Billu. Not only that, the delay in lodging the FIR starts from 26.06.1999 when the deceased disappeared. As per the case of the prosecution, the complainant came to know about the culprits on 15.08.1999. Even thereafter, the complainant kept silent for a week. Spontaneous and early lodging of FIR removes the possibility of embellishment. It appears that the delay has been noticed to make out a coloured version in the case of the prosecution causing a serious dent therein. PW-5 Mai Ram attesting witness to the recovery memo stated that motorcycle was recovered by the Police from the house of Parmanand accused in his presence and thereafter he along with Ram Pal PW-3 and both the accused had gone to the bridge and further Parmanand accused got recovered a purse containing one identity card of the accused from inside the grass near the bridge and that he thumb marked recovery memos Ex.PE and Ex.PF. Thus, said PW-5 deposed otherwise and the recovery of watch as per memo Ex.PF has been

shown from Ram Phal and not from Parmanand and that of identity card and purse from Parmanand vide memo Ex.PE and not from Ram Phal which goes to show that PW-5 Mai Ram had only signed the said documents and was not present on the spot and the said recoveries on this score also have become doubtful. We have gone through the extra-judicial confession recorded by PW-6 Sita Ram and the same does not close inspire confidence of the Court for the reason that he is neither a confident of the respondents nor an influential person or a person in authority. Credibility of this witness is further weakened by the fact that he did not immediately inform the Police either about the factum of extra-judicial confession or regarding the whereabouts of the respondents. Once the theory of extra-judicial confession is discarded and the recovery from the respondents is doubtful, the chain of cogent circumstances is broken. The benefit of doubt would certainly go to the accused/respondents.

In view of above, we are of the opinion that the learned trial Court has rightly acquitted the accused/respondents as the prosecution has remained unable to complete the chain of circumstantial evidence.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair*, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double

presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In *State of Rajasthan vs Shera Ram @ Vishnu Dutta*,

(2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon mis-appreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

In view of the above, the present appeal filed by the State

of Haryana is dismissed and the impugned judgment passed by the trial Court is upheld.

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

15.11.2019
SN

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