

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

**CRM-10999-2019 IN/AND  
CRA-D-1193-DB of 2010 (O&M)  
Date of Decision: 12.9.2019**

Ram Parsad and another

.....Appellants

Vs.

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI  
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Ms. Priyanka Dalal, Advocate  
for the appellants.

Mr. Randhir Singh, Addl. A.G, Haryana.

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**AJAY TEWARI, J. (ORAL)**

**CRM-10999-2019**

This is an application for listing the main appeal for actual hearing.

In view of the grounds mentioned in the application, the same is allowed.

Main case is taken up for hearing today itself.

**CRA-D-1193-DB-2010**

1. This appeal has been filed by the appellants against the judgment of conviction dated 29.9.2010 and order of sentence dated 4.10.2010 whereby the appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to

pay a fine of Rs. 10,000/- each and, in default of payment of fine, to further

undergo RI for two years in case FIR No. 31 dated 3.2.2008 registered at Police Station City Gohana.

2. Before proceeding with the case, we deem it appropriate to record here that appellant No. 1-Ram Parsad was granted suspension of sentence by this Court on 4.2.2016 but vide order dated 24.5.2016, the said order was recalled and his application for suspension of sentence was dismissed and applicant-appellant No.1-Ram Parsad was ordered to be taken into custody. Despite the lapse of 3½ years and the efforts made by the police, he has not been taken into custody so far. We have mentioned this fact only to bring on record otherwise it may not have any bearing on the merits of the case, leaving it open to the authorities to take appropriate action against him, as per law for this act.

3. As per the prosecution case, both the appellants had been engaged by the son of the deceased to build a house. On 2.2.2008, they asked him to clear all the up-to-date wages. He gave them some money and told them that the remaining money would be paid to them subsequently. At about 6.30 P.M., both the appellants left towards village after taking their meals. He waited for them till 10.00 P.M., but they did not return. He then went back to his old house leaving his father to stay in the under construction house. On the next morning, at about 7.00 A.M., when he went to his father to serve him tea, he found his father lying murdered and his motorcycle and motor of the submersible pump missing. The appellants were also not present. He tried to search for them, but they could not be traced and he concluded that both the appellants had committed the murder of his father and left the place on the motorcycle. After the FIR was lodged, investigation was started. During the investigation, the police recorded the

statement of co-villager Mehtab Singh, who stated that on 2.2.2008, at about 11/11.30 P.M., he was coming home after irrigating his fields and he saw both the appellants pushing the motorcycle. He asked them where they were going but they left the motorcycle near the village pond and escaped. Since he did not know anything, he went to his house to sleep. On 5.2.2008, both the appellants were arrested. On the next day, pursuant to the disclosure statement made by them, a *Basoli* and an iron pipe (which were allegedly used to commit the crime) were recovered.

4. During trial, apart from the complainant (PW-10), aforementioned Mehtab (PW-2) and Samunder Singh (PW-3) were also examined. PW-3 Samunder Singh testified that on 2.2.2008, at about 7.00 P.M., while he was squatting to answer the call of nature, the appellants passed by him and he heard them talking to each other and planning to murder the deceased, because the complainant was not paying them their money. PW-1 Balwan (also a co-villager) was the independent witness of the recoveries. PW-4 Dr. I.S.Punia, who conducted the post-mortem on the dead body of Randhir Singh, gave his opinion that it was possible that the murder was committed with an iron pipe and *basoli*. PW-10 Dharambir-complainant explained the motive viz non-payment of arrears. The testimony of the other witnesses need not be referred to at this stage, as they were mainly formal in nature.

5. Having been convicted and sentenced as mentioned above, the appellants have filed the present appeal before us.

6. Learned counsel for the appellants has argued that this was a blind murder case which could only have been brought home by circumstantial evidence, but the circumstantial evidence adduced in the

present case, falls far short of the standard prescribed. She has referred to the judgment of *Deonandan Mishra versus State of Bihar, 1955 AIR SC 801* and has argued that the standards set 65 years ago are still in place. As per her, there is no explanation why Mehtab and Samunder Singh did not disclose the suspicious activities of the appellants to the complainant or the deceased. Further she has pointed out that as per the report of the Forensic Science Laboratory, the material on the *basoli* was disintegrated and though the experts were able to detect blood on the iron pipe, the group was inconclusive. In the circumstances, as per her, there are two glaring omissions on the link of circumstances. She has further argued that it is highly unlikely that the appellants would go to the extreme step of killing the father of the complainant only because he had told that he would not make full payment to them but only make the part payment because most construction workers, who take full contracts, are aware that full payment is released only if the work is complete. She has argued that had the appellants been guilty, they would have definitely escaped to a far off place and that is why neither the Investigating Officer in his testimony states from where the appellants had been arrested on 5.2.2008 nor the arrest memo had been placed on record because this would indicate that the appellants were not guilty. As regards their absence in the morning when the complainant came, she has argued that they could have been definitely afraid that they might be implicated in a murder which somebody else had committed and that is why they stayed away out of fear. She has further argued that the trial Court had erred in convicting the appellants on the basis of conjectures and surmises.

7. Learned Additional Advocate General has sought to defend the judgment and has argued that this is not a case where the recoveries were

made without associating any public person but PW-1 Balwan is an independent person who was witness to the recoveries made on the disclosure statements of the appellants. He has further argued that as regards Mehtab, he was reaching home at 11.30 P.M. and at that time, he did not know that this serious crime had been committed and, therefore, much benefit cannot be drawn by the defence counsel from his omission to go and inform the complainant about the incident.

8. In our considered opinion, the appeal must succeed. Even if it was 11.30 at night and if Mehtab had seen the appellants dragging away the motorcycle of the complainant and if they had escaped on his questioning, he must have had suspicion and even if it was late, in normal course he would have definitely informed the complainant that his motor cycle was with the appellants who had run away. The case of PW-3 Samunder Singh is even stranger because he heard the appellants planning the murder and at that time, it was only 7.00 P.M. Being a co-villager, in normal circumstances, he would have immediately alerted the deceased and the complainant and rather would have taken preventive action against the appellants and his omission to do so creates grave suspicion on his testimony. The recoveries are also not conclusive because there is no proof that the objects recovered were used in the commission of crime. In the circumstance, we cannot but reach the conclusion that the trial Court seems to have convicted the appellants more on the basis of suspicion than the basis of proof.

9. Consequently, the appeal is allowed and the impugned judgment of conviction dated 29.9.2010 and order of sentence dated 4.10.2010 are set aside. Appellant No. 2-Vinod Kumar, who is in custody be

released forthwith and as mentioned above, liberty is granted to the State to take appropriate action against appellant No. 1-Ram Parsad in terms of the order dated 24.5.2016.

10. Since the main appeal has been decided, the pending CRMs, if any, also stand disposed of.

**(AJAY TEWARI)**  
**JUDGE**

**(HARNARESH SINGH GILL)**  
**JUDGE**

**September 12, 2019**  
Gurpreet

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