

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

CRA-D No. 1074-DB of 2011 (O&M)

Reserved on : 2.5.2019

Date of decision : 7.5.2019

Bajrang and others

.... Appellants

versus

State of Haryana

... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Lalit Batra**

Present Mr. S. K. Garg Narwana, Senior Advocate with
Mr. Virat Amarnath, Advocate, for the appellants.
Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against the judgment dated 13.9.2011 and order dated 17.9.2011, rendered by learned Sessions Judge, Fatehabad, in Sessions Case No. RBT 16 of 2010/ 2011, by appellants Bajrang, Devender Kumar @ Kaku, Kiran Bala and Baljeet Kaur. They were charged with and tried for the offence punishable under Sections 302 and 201 read with Section 34 IPC. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo life imprisonment and to pay fine of ₹ 21,000/- each, and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year. They were also convicted and sentenced under Section 201 read with Section 34 IPC to

undergo rigorous imprisonment for a period of three years and to pay fine of ₹ 5,000/- each, and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 18.11.2009, ASI Jagdish Prasad along with other police officials was present at Bus-Stand, Ratta Khera, in connection with patrolling duty. Rohtash Kumar complainant met him and got recorded his statement. According to complainant- Rohtash Kumar, they were three brothers and two sisters. All the brothers were residing together. On 15.11.2009, his brother Vinod Kumar, aged about 18/20 years, left home at about 8.00/8.30 P.M., after taking dinner. He had told that he would come back after some time but he did not return. They made efforts to trace him at their own level. His cousin Subhash disclosed that when he was going to Ratia, he saw that Vinod Kumar was being caught by accused Bajrang, Devender Kumar @ Kaku sons of Jaila Ram, Kiran Bala and Baljeet Kaur. He rescued Vinod Kumar from their clutches and sent him towards his house. On 18.11.2009, while his brother Sanjay was searching Vinod Kumar and reached near the place of *Peer Baba*, he found shoes and clothes of Vinod Kumar. Sanjay came back to the house and told him about this fact. He along with his brother Sanjay and cousin Ravi Kumar went at the spot and found shoes, socks, T-shirt and jacket near a well. On peeping inside the well, they saw a person wearing blue jean pants lying there. When they carefully saw, it was the dead-body of their brother Vinod Kumar. Ravi and Sanjay were left at the spot. Police reached the spot. The dead-body was taken out from the well.

The scene of crime was prepared. Post-mortem examination was got conducted. The investigation was carried out. Challan was put up after completion of all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. Three witnesses were examined in defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Rohtash Kumar testified that on 15.11.2009 at about 8.00/8.30 P.M., his brother Vinod Kumar left the house after taking meal saying that he would come after some time but he did not return to the house. In the same night, his cousin brother Subhash (son of his *Bua*) was going to Ratia for his personal work at about 11.00/ 11.30 P.M. He saw a quarrel taking place near the house of Jaila Ram. When he reached near the house of Jaila Ram he saw that his brother Vinod Kumar was being beaten up by accused Bajrang, Devender @ Kaku, Kiran Bala and Baljeet Kaur. Subhash got released Vinod Kumar from the accused persons. Subhash went away to Ratia. On the next morning, his cousin Subhash came to him and

asked about the whereabouts of Vinod Kumar. He told him that Vinod Kumar had left the house after taking the meal on previous night and had not come back. Then Subhash told him that accused Bajrang, Devender Kumar @ Kaku, Kiran Bala and Baljeet Kaur were beating Vinod Kumar and he got him released from the accused persons. Thereafter, he had gone to Ratia. On 18.11.2009, his younger brother Sanjay Kumar went in search of his brother Vinod Kumar. When he reached near a well situated adjoining the *Dargah* of *Peer Baba*, he found the clothes and shoes of his brother Vinod near the well and when Sanjay saw in the well, he found the dead-body of Vinod Kumar lying in the well. The dead-body was identified. They informed the police. Police recorded his statement. The police searched the clothes and shoes of his brother Vinod lying outside the well. During search, a snap of Vinod with accused Kiran Bala was recovered from the clothes. After seeing the photograph, they came to the conclusion that there were illicit relations between his brother Vinod and accused Kiran Bala. Therefore, the accused killed his brother Vinod and thrown his dead-body in the well. In his cross-examination, he has categorically admitted that Subhash did not disclose the fact with regard to beating of Vinod Kumar to him immediately on 15.11.2009 in the night time through his mobile phone. He has also admitted that he and his cousin Subhash have their personal mobile phones. Subhash came to him at about 7.30 A.M. on the next day i.e. 16.11.2009 and told him about the incident. Vinod Kumar was last seen by his cousin Subhash near the house of the accused where they were beating him.

7. PW2 Subhash has testified that he had seen the accused beating Vinod Kumar on 15.11.2009 at about 11.00/11.30 P.M. On the next day, he went to the house of PW1 Rohtash. He enquired about Vinod Kumar. PW1 Rohtash told him that on the previous evening at about 7.00/ 8.00 after taking meal, Vinod Kumar had gone from the house but did not come back. Then he told that Vinod Kumar was beaten by the accused in the night time at about 11.00/ 11.30 P.M. They started searching for Vinod. On 18.11.2009, his cousin Sanjay saw the clothes and shoes of Vinod Kumar near the well situated near the *Peer Baba Dargah*. The dead-body of Vinod Kumar was recovered from the well. In his cross-examination, he admitted that in their street and in the house of Jaila there was no electricity connection. There was no street light where the quarrel took place. It was dark at the time when the quarrel took place on 15.11.2009. He remained there for about 2-3 minutes. He had not told his cousin PW1 Rohtash that he had got released Vinod and sent him towards his house. On the night of 15.11.2009, he was going to Ratia for delivering the dress of Waiter to Dalbara. He could not tell the time, when he reached Ratia and came back to his house at village Ratta Khera. He had not informed the police about the quarrel took place in the night of 15.11.2009.

8. PW3 Sanjay is the brother of deceased Vinod Kumar. He has corroborated the statement of PW1 Rohtash Kumar. He also deposed that after seeing the snap, they came to the conclusion that there were illicit relations between his brother Vinod and accused Kiran Bala. In his cross-examination, he admitted that he did not tell the police about the murder of

Vinod Kumar by the accused persons. They were not on talking terms with the family of the accused persons.

9. PW6 HC Rajbir Singh deposed that clothes of the deceased were recovered. A photograph of deceased Vinod Kumar along with a girl was also recovered. The recovery memo was prepared.

10. PW8 DSP Suresh Kaushik has proved report, Ex.P22.

11. PW13 ASI Jagdish Parsad testified that he along with police officials accompanied by the complainant PW1 Rohtash reached the spot. The dead-body was retrieved from the well. The articles lying on the spot belonging to deceased Vinod Kumar were taken into possession. He conducted the inquest proceedings. The dead-body was sent for post-mortem examination. In his cross-examination, he admitted that he had deposited the articles taken into possession on 18.11.2009 from the spot with MHC on the same day at about 9.15 P.M. But he did not deposit the photo, Ex.P1, with the MHC, it was kept along with inquest papers. The photo, Ex.P1, was handed over to the Investigating Officer Ajaib Singh after registration of the case on 13.12.2009.

12. PW14 Inspector Ajaib Singh had recorded the formal FIR, Ex.P29. He conducted the investigation. He went to village Ratta Khera. He searched for accused. On 10.4.2010, accused Bajrang and Devender were arrested. Accused Kiran Bala and Baljeet Kaur were arrested on 4.5.2010. In his cross-examination, he admitted that witnesses, namely, Rohtash, Subhash, Sanjay and Ravinder had stated in their statements under Section 161 Cr.P.C. on 18.12.2009 that Vinod had committed suicide. He did not

find any direct evidence regarding alleged illicit relations between deceased Vinod Kumar and accused Kiran Bala. Photo, Ex.P1, was obtained by him from PW13 ASI Jagdish Parsad on 13.12.2009 and it was not in a sealed parcel. He did not notice any struggle marks near the well.

13. The post-mortem examination was conducted by PW4 Dr. Rama Bansal along with Dr. Hanuman Singh on the body of Vinod Kumar. According to them, the cause of death was due to shock and haemorrhage as a result of injuries to the vital organs, which were ante-mortem and sufficient to cause death. The probable time that elapsed between injuries and death was variable and between death and post-mortem examination was 1-3 days.

14. The prosecution has relied upon the theory of '*Last Seen Together*'. According to PW2 Subhash, he was going to Ratia from his village Ratta Khera for some personal work on 15.11.2009 at about 11.00/11.30 P.M. He had seen the accused administering beatings to deceased Vinod Kumar. He got him released from the clutches of the accused and sent him to his house. In his cross-examination, he admitted that there was no electricity connection in the house of Jaila. There was no street light where the quarrel took place. It was dark. In case, he had seen the accused giving beatings to deceased Vinod Kumar, he should have informed PW1 Rohtash immediately. PW1 Rohtash has categorically admitted that he and his cousin Subhash were possessing personal mobile phones. PW2 Subhash had come to the house of PW1 Rohtash on 16.11.2009 in the morning. PW2 Subhash could not tell the time, when he

reached Ratia and came back to his house at village Ratta Khera. He also admitted in his cross-examination that he had not informed the police about the quarrel took place in the night of 15.11.2009. The statement of PW2 Subhash does not inspire confidence.

15. The motive attributed to the appellants is that the deceased had illicit relations with one of the accused, namely, Kiran Bala. PW1 Rohtash and PW3 Sanjay have deposed that after seeing the photograph, they came to the conclusion that there were illicit relations between deceased Vinod and accused Kiran Bala. The photograph was recovered from his clothes. In case the deceased had illicit relations with accused Kiran Bala, this fact would have been in the knowledge of his family members. It is also not understandable why the deceased would carry photograph of a girl in his pocket.

16. PW14 Inspector Ajaib Singh, as noticed hereinabove, has specifically deposed that he did not find any direct evidence regarding alleged illicit relations between deceased Vinod Kumar and accused Kiran Bala. In his cross-examination, he admitted that Rohtash, Subhash, Sanjay and Ravinder had stated in their statements recorded under Section 161 Cr.P.C. on 18.12.2009 that Vinod had committed suicide. He could not also explain as to why PW13 ASI Jagdish Parsad, had not obtained photo, Ex.P1, in a sealed parcel. He did not notice any struggle marks near the well.

17. PW13 ASI Jagdish Parsad admitted in his cross-examination, that he had deposited the articles taken into possession on 18.11.2009 from the spot with MHC on the same day at about 9.15 P.M. but he did not

deposit the photo, Ex.P1, with the MHC, and it was kept along with inquest papers. The photo, Ex.P1, was handed over to the Investigating Officer Ajaib Singh after registration of the case on 13.12.2009. He also admitted that photo, Ex.P1, was not converted into sealed parcel. It was a vital piece of evidence. It should have been taken into possession into a sealed parcel.

18. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed. The appellants are acquitted of all the charges framed against them by giving them benefit of doubt. The appellants be released forthwith, if not required in any other case.

(Rajiv Sharma)
Judge

7.5.2019
vs

(Lalit Batra)
Judge

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