

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

Reserved on : 23.1.2019

Date of decision : 1.2.2019

1. **CRA-D No. 352-DB of 2010 (O&M)**
Satish @ Kala Appellant
versus
State of Haryana ... Respondent
2. **CRA-D No. 496-DB of 2010 (O&M)**
Sushil @ Goli Appellant
versus
State of Haryana ... Respondent
3. **CRA-D No. 800-DB of 2010 (O&M)**
Ram Bilas @ Situ Appellant
versus
State of Haryana ... Respondent
4. **CRA-S No. 2809-SB of 2009 (O&M)**
Smt. Kulwinder Kaur Appellant
versus
The State of Haryana ... Respondent

Coram: **Hon'ble Mr. Justice Rajiv Sharma**
Hon'ble Mr. Justice Harinder Singh Sidhu

Present Mr. Vishva Bahl, Advocate, for the appellant
in CRA-D No. 352-DB of 2010,
Mr. Jasbir Mor, Advocate, for the appellant
in CRA-D No. 496-DB of 2010,
Mr. Vikas P. Singh, Advocate, for the appellant
in CRA-D No. 800-DB of 2010, and
Mr. Rishab Lohan, Advocate for
Mr. R. N. Lohan, Advocate, for the appellant
in CRA-S No. 2809-SB of 2009.

Mr. Vishal Garg, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these appeals bearing CRA-D No. 352-DB of 2010, CRA-D No. 496-DB of 2010, CRA-D No. 800-DB of 2010, and CRA-S No. 2809-SB of 2009, the same are being disposed of by a common judgment.

2. The present appeals are instituted against the judgment and order dated 3.11.2009, rendered by Additional Sessions Judge, Jind, in Sessions Trial No. 28 dated 25.08.2009, vide which appellants Satish @ Kala, Sushil @ Goli and Ram Bilas @ Sittu, who were charged with and tried for the offence punishable under Sections 460/201/302/34 IPC; appellants Satish @ Kala and Ram Bilas @ Sittu, were charged with and tried for the offence punishable under Section 25 of the Arms Act, 1959; and appellant Kulwinder Kaur was charged with and tried for the commission of offence punishable under Sections 201, 216-A IPC, were convicted and sentenced as hereunder:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
Satish @ Kala	302/34 IPC	Imprisonment for life and to pay a fine of ₹ 10,000/-. In default of payment of fine, to undergo further RI for six months.
	25 of the Arms Act	To undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 3,000/-. In default of payment of fine, to undergo further rigorous imprisonment for three months.
Sushil @ Goli	302/34 IPC	Imprisonment for life and to pay a fine of ₹ 10,000/-. In default of payment of fine, to undergo further RI for six months.
Ram Bilas @ Sittu	302/34 IPC	Imprisonment for life and to pay a fine of ₹ 10,000/-. In default of payment of fine, to undergo further RI for six months.
	25 of the Arms Act	To undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 3,000/-. In default of payment of fine, to undergo further rigorous imprisonment for three months.
Kulwinder Kaur	201 IPC	To undergo rigorous imprisonment for a period of four years and to pay a fine of ₹ 4,000/-. In default of payment of fine, to undergo further rigorous imprisonment for four months.

3. Both the sentences awarded to accused Satish @ Kala and Ram Bilas @ Sittu were ordered to run concurrently.

4. The case of the prosecution in a nutshell is that PW1 Vijay Kumar son of Amrit Singh Jain had filed the complaint to the effect that he

along with his sister-in-law Silka Devi widow of Satish Kumar, was doing the business of Commission Agent. Indian Oil agency was looked after by Manoj Kumar alias Babli. On account of holidays after examination, family members of Manoj Kumar had gone to Rohtak. On 22.3.2009, after finishing his work, Manoj Kumar had gone to the house of Kul Bhushan No. 56/6 for dinner. After taking dinner, he reached at his shop situated in Old Anaj Mandi towards Kath Mandi side at about 8.15/8.30 P.M. On 23.3.2009 at about 8.45 A.M., he came from his house and gave the bell. Door was not opened by anyone. He then reached the back side of the shop through the adjoining shop. He found the back door opened. He went inside. He saw that both the hands and feet of Manoj Kumar were tied with rope (*sutli*) in the front portion of shop while telephone wire was tied around his neck. He was dead. He called Ram Kumar. Then people from the market also assembled at the spot. Police was informed. The dead-body was sent for post-mortem examination. Recoveries were effected. Investigation was completed and challan was put up after completion of all the codal formalities.

5. 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. The accused were convicted and sentenced, as noticed above. Separate appeals have been filed by the appellants against the judgment and order of the learned trial Court.

6. 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.

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

8. PW1 Vijay Kumar is the material witness. He deposed that deceased Manoj Kumar was his nephew. He along with his brother Satish Kumar used to do the business of commission agent and agency of Indian Oil together, however, after the death of Satish Kumar, Manoj Kumar used to run the Indian Oil agency. Prior to 2-3 days of this occurrence, there were vacations in the school. Wife of Manoj Kumar along with her children had gone to Rohtak. On 22.3.2009, Manoj Kumar along with accused Satish, who was *munim*, were on the shop. Accused Satish left the shop at 12.00 noon and thereafter did not come back. On that day in the evening, Manoj had gone to the house of Kulbhushan. After taking dinner, he came back at shop at about 8.15/8.30 P.M. Thereafter, he left the shop and at that time Manoj Kumar was present in the shop as he used to reside at the first floor of the shop. On the next day i.e. 23.3.2009 at about 8.45 A.M., he (PW1) reached at the spot and found the shop closed. He gave the door bell. As there was no response from inside, he went to back side of the shop through the adjoining shop of Ram Kumar. He went inside. He saw that both the hands and feet of Manoj Kumar were tied with small ropes and his mouth was gagged with a cloth. His neck was strangulated with a telephone wire. He was dead. Police was informed. His statement, Ex.PA, was recorded. In his cross-examination, he deposed that he had not brought any proof of accused Satish being employed by deceased Manoj Kumar. They had not obtained signatures of accused Satish on the receipt of his pay slip. They had not issued any appointment letter to accused Satish. They had shown

payment of his salary in their income tax return. Further he deposed that he had not brought the income tax return. He admitted that he had not talked on mobile with Manoj Kumar on 23.3.2009. Manoj Kumar used to keep the mobile as well as landline connection.

9. PW2 ASI Mahabir Singh deposed that accused Satish alias Kala was interrogated by SI Subhash Chander in his presence. He made disclosure statement, Ex.PB. He deposed that he had kept concealed his share of money in his residential house behind TV. He got recovered an amount of ₹ 1,630/- and one live cartridge of .315 bore from a tin box. These were taken into possession. Accused Sushil led the police party to his house and got recovered one knife as well as currency notes. Accused Ram Bilas @ Sittu @ Rajiv also made disclosure statement, Ex.PF. In his cross-examination, he deposed that accused Satish was interrogated for one hour. When interrogation of accused Satish was going on, accused Sushil was sitting in the private jeep. The Investigating Officer tried to join witnesses from public on the way but they refused to join the same as they were going to their place of work. The place from where accused Satish had got the recovery effected was accessible to all the family members. The Investigating Officer asked the neighbours to join the investigation but they refused.

10. PW3 ASI Mahabir deposed that he had gone in search of accused Ram Bilas @ Raju @ Sittu to Gujarat. A mobile phone was recovered from him.

11. PW4 HC Shakti Singh deposed that on 23.3.2009 he was posted in the office of SP, Jind in Cyber Crime Department. He supplied the call details of Mobile Phone No. 9466320068 and IMEI No.

35809901132910. It was in the name of deceased. He did not know the name of the applicant. The police moved an application on 23.3.2009 to know the call details of the mobile of the deceased. The SIM number of the mobile of the deceased was 9466320068. On verification, he found that the mobile phone of the deceased had gone out of order and its SIM card was used in some other mobile phone instrument. On 24.3.2009, he had detected that SIM No. 9466320068 of the deceased had been further used in another IMEI No. 35809901103291. It was also detected that the call from the SIM of the deceased were made at entirely different numbers and prior to that deceased never made any call on that number and that number was 9416077967. It was also detected on searching of Mobile IMEI No. 35809901103291 that one another SIM No. 9896265478 was being used. Thereafter, they searched call details of SIM No. 9896265478 and found that it was being used to make call on two specific numbers, which were 9416077967 and 9728326015. One of the suspected number was 9416077967. On search of call detail of SIM No. 9416077967, they found two other suspected SIM Nos. 9992185634 and 9728195571. It was further detected that out of those SIM numbers i.e. 9992185634, 9728195571 and 9416077967, location of one of the mobile number was to be out of State. As per record, SIM No. 9466320068 was in the name of Manoj Kumar son of Satish Kumar, resident of Anaj Mandi, Jind, and SIM no. 9416077967 was in the name of Om Parkash son of Lal Ji, resident of VPO Khurd, District Bhiwani. SIM No. 9728195571 was in the name of Rabinder son of Shish Ram, resident of House No. 13/13, Kalanaur Dehat, Rohtak. In his cross-examination, he deposed that he prepared the call details through information received from internet. He did not know the different names of

the operating system. An application was moved to get call details. He also admitted that Ex.PH did not bear signatures of any official of Cyber Cell, Jind. He also admitted that call details, Ex.PH, do not bear any certificate of genuineness from any mobile company. He also admitted that original record of calls were with the Nodal Officer of the concerned mobile company. He also admitted that ID proofs of original owner of SIM were with the concerned company. He had not seen the original ID proof of ownership of SIMs. He also admitted that location of SIM No. 9416077967 had not been shown in Jind City and Kaithal in Ex.PH. Volunteered tower numbers mentioned in connection with location of SIM No. 9416077967 were located only in Jind City.

12. PW8 Dilbag Singh, has prepared the site plan.

13. PW10 Kulbhushan Jain was the brother of the deceased. On 24.3.2009, he had inquired from neighbours, who had disclosed that they had seen servant Satish, Sunil @ Goli and one unknown person on a Vicky on the night of 22.3.2009. Thereafter, he traced the mobile phone of his brother Manoj Kumar. The mobile number of Manoj Kumar was 9466320068. On 22.3.2009, when he was returning from Jaipur to Jind, on the way he received a telephone call on his mobile number about the murder of his brother by some unknown person.

14. PW11 SI Hukam Singh deposed that on 1.4.2009 accused Ram Bilas alias Sittu alias Rajiv made disclosure statement, Ex PO. He led the police party in his fields situated in village Kohad, District Bhiwani, and got recovered a pistol of 315 bore and live cartridge after removing the earth. The pistol and live cartridge were taken into possession vide recovery memo, Ex.PQ. In his cross-examination, he admitted that he had seen only

pistol, Ex.P103, and had not seen the cartridge, which was alleged to be recovered from accused Ram Bilas. He also asked to the people at village Luhani and Titani to join as witness of recovery, however, they refused. He admitted that he had not noted their names.

15. PW12 SI Subhash Chand deposed that Inspector Kulwant Singh directed him to verify the owner of mobile no. 9728195571 on 25.3.2009. On 27.3.2009, Inspector Kulwant Singh arrested accused Kulwinder Kaur. She made disclosure statement, Ex.PS. SIM and mobile phone of the deceased were recovered from accused Kulwinder Kaur. He also arrested accused Satish @ Kala from his house. His disclosure statement was recorded vide Ex.PT. Mobile phone was recovered from accused Sushil vide recovery memo, Ex.PY. Accused Satish had also made disclosure statement before him on 29.3.2009 when he was in police custody. Satish got recovered ₹ 1,630/- and one live cartridge from a tin box. He also prepared rough site plans of the places of recovery from accused Sushil and accused Satish, Ex.PAA and Ex.PBB, respectively. On 31.3.2009, accused Ram Bilas @ Sittu got demarcated the place of occurrence and he prepared demarcation memo, Ex.PCC.

16. PW13 Dr. Ashwani Kumar had led his evidence by filing affidavit Ex.PDD. He deposed that he along with Dr. Arvind Kumar, conducted the post-mortem examination on 23.3.2009. According to them, the cause of death was asphyxia as a result of strangulation coupled with smothering, which was sufficient to cause death in ordinary course of circumstances. The injuries described were ante-mortem in nature. The probable time between injury and death was declared variable. Death and post-mortem examination was within 4 to 36 hours.

17. PW14 HC Mukesh Kumar deposed that on 1.4.2009, accused Ram Bilas @ Sittu @ Rajiv was interrogated by SI Hukam Singh in his presence. He made disclosure statement, Ex.PO and got recovered pistol, Ex.P103 and cartridge.

18. PW16 SI Raj Kumar deposed that on 23.3.2009 he along with ASI Raj Kumar and Constable Satpal were present at Old Grain Market, Jind. At about 11.00 A.M., Vijay son of Amrit met them and got recorded his statement, Ex.PA. He also prepared rough site plan of the place of occurrence, Ex.PJJ. On 27.3.2009, he joined the investigation with SHO Kulwant Singh. Accused Kulwinder Kaur, Satish alias Kala and Sushil alias Goli made disclosure statements. Accused Satish alias Kala got recovered pistol of 315 bore in pursuance to his disclosure statement, Ex.PT. One mobile phone was also recovered from accused Satish alias Kala. Recoveries were made. The police party tried to associate independent persons but no body was ready to join the same. No action was taken against those persons, who refused to associate to join the investigation.

19. PW17 Inspector Kulwant Singh deposed that on 23.3.2009, on receiving the message, he visited the spot where ASI Raj Kumar and SI Raj Kumar were present. On 24.3.2009, he again visited the place of occurrence. On 27.3.2009 one mobile phone was recovered from accused Kulwinder Kaur. In pursuance of the disclosure statement of accused Sushil, one Moped (Vicky) was taken into possession vide recovery memo, Ex.PZ. In his cross-examination, he admitted that the recovered moped (Vicky) was without number. He had not produced any document with regard to the ownership of the moped. Moped was not produced in the Court.

20. PW19 Devender Batra, had taken the photographs of the dead

body of deceased Manoj Kumar and also the place of occurrence on 23.3.2009.

21. The case of the prosecution precisely is that PW1 Vijay Kumar along with his sister-in-law Silka Devi widow of Satish Kumar, was doing the business of Commission Agent and the other business Indian Oil agency was looked after by deceased Manoj Kumar alias Babli. Due to vacations, family members of deceased Manoj Kumar had gone to Rohtak. On 22.3.2009, Manoj Kumar along with accused Satish were on the shop. At about 12.00 noon accused Satish left the shop. In the evening, Manoj Kumar after taking dinner at the house of Kul Bhushan, came back to shop at about 8.15/8.30 P.M. and thereafter PW1 Vijay Kumar left the shop. On the next day, when the door was not opened, PW1 Vijay Kumar went to back side of the shop through the adjoining shop and found his nephew murdered. FIR was registered. As per post-mortem examination, the cause of death was asphyxia as a result of strangulation coupled with smothering. The injuries described were ante-mortem in nature. The probable time between injury and death was declared variable. The time between death and post-mortem examination was within 4 to 36 hours.

22. PW1 Vijay Kumar in his statement, Ex.PA, stated that on 22.3.2009, after finishing his work, Manoj Kumar had gone for dinner at the house of Kul Bhushan and after taking dinner he came back at about 8.15/8.30 P.M. PW1 Vijay Kumar reached at the shop in the morning on 23.3.2009. He found the shop locked from inside. PW1 Vijay Kumar went to the shop from back side through the adjoining shop. There is improvement in the statements of PW1 Vijay Kumar. As per Ex.PA, after taking dinner Manoj Kumar came back to the shop. He had not stated in

statement Ex.PA that he was present in the shop when Manoj Kumar came back. While appearing in Court as PW1, he deposed that when Manoj Kumar reached at the shop only then he left the shop.

23. As per the prosecution case, the motive behind the murder was that some altercation between Manoj Kumar and accused Satish @ Kala took place about 21 days prior to the occurrence. As accused Satish @ Kala was scolded by Manoj Kumar (deceased), he was bearing grudge against him and made a plan with accused Ram Bilas @ Sittu @ Rajiv to rob and teach him a lesson.

24. According to the prosecution, accused Satish was servant of deceased Manoj Kumar. No document has been placed on record during evidence that accused Satish had ever worked as munim in the firm. They had not produced any receipt with regard to payment of his salary. No appointment letter was produced. Though it was stated that they had shown payment of his salary in their income tax return, however, the income tax return was not produced in the Court. Thus, the very genesis of the case that accused Satish @ Kala was working as munim has not been proved.

25. We have gone through the photographs placed on record during the course of trial. In photograph, Ex.PUU/7, the currency notes were protruding out of the back pocket of the pant of the deceased. Thus, the possibility that the deceased was killed to rob him becomes doubtful.

26. The prosecution has also relied upon the theory of last seen by PW10 Kul Bhushan Jain. According to him, he had inquired from the neighbours, who disclosed that they had seen servant Satish, Sunil @ Goli servant of Ashoki and one unknown person, on a Vicky on the night of 22.3.2009. It is hearsay evidence. None of the persons, who had disclosed

that he had seen the accused, was produced in Court. The appellants were allegedly seen by someone on a moped (vicky) on the night of 22.3.2009. The moped was not produced in the Court. In his cross-examination, PW17 Kulwant Singh categorically admitted that the recovered moped was without number and no certificate with regard to the ownership of that moped was obtained. The Investigating officer has not even ascertained the owner of the moped. Moped (Vicky) was got recovered in pursuance of the disclosure statement of accused Sushil, which was got recorded, when he was in police custody.

27. Further the case of the prosecution is that the accused were arrested on the basis of SIM/ Mobile phones of deceased Manoj Kumar, which were recovered from the possession of the accused. According to PW4 HC Shakti Singh, on verification it was found that the mobile phone of the deceased had gone out of order and its SIM was used in other mobile phone. On the basis of an application, call details, Ex.PH, were provided. However, no officer/ official of the mobile company was produced. In his cross-examination, he also admitted that he prepared the call details through information received from internet. PW4 has also admitted that no certificate of genuineness regarding call details, Ex. PH, has been issued by the officer of mobile company. He also admitted that on Ex.PH it was nowhere mentioned that who had asked for the details and by whom the details had been supplied.

28. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeals filed by them are allowed. The judgment and order dated 3.11.2009 are set aside. The appellants are acquitted of all the charges framed against them.

29. Sentence of appellants Sushil @ Goli and Satish @ Kala had been suspended vide order dated 28.7.2014 and they are on bail. Their bail bonds are discharged.
30. Sentence of appellant Kulwinder Kaur was also suspended vide order dated 25.1.2010. Her bail bonds are discharged.
31. Appellant Ram Bilas @ Sittu is in custody. He be released forthwith, if not required in any other case.

(Rajiv Sharma)
Judge

1.2.2019
vs

(Harinder Singh Sidhu)
Judge

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