

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-281-DB-2016
Reserved on : 25.07.2019
Date of decision : 31.07.2019

Rajbir and another

... Appellants

Versus

State of Haryana

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate
for the appellants.

Mrs.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 12.02.2016 and 15.02.2016 rendered by the Additional Sessions Judge, (Exclusive Court) Jhajjar, in Sessions Case no.22 of 2013/2016 (RBT) 16.07.2013/05.01.2016 whereby the appellants were charged with and tried for offence punishable under Section 302 read with Section 34 Indian Penal Code (in short 'IPC'). The appellants were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year for offence punishable under Section 302 read with Section 34 IPC.

telephonic information was received from Ajit resident of village Parnala about the discovery of dead body of a young person lying in his vacant plot situated in Maya Vihar, Line Par, Bahadurgarh. SI/ SHO Ombir Singh along with Baljeet Singh and other police officials reached Nahra-Nahri road near Oxford School, Line Par, Bahadurgarh. Ajit Rathi met him. On the application Ex.PW2/A made by Ajit Rathi, FIR Ex.PW15/A was registered by ASI Mahavir Singh. Photographs were taken on the spot. In the meantime, parents of deceased reached at the spot. The dead body was identified as Sudhir.

3. Thereafter, Anand Kumar son of Nathu Singh made a statement with the allegations that he had retired from army. He was residing along with his family in his own residential house situated in Bank Colony, Bahadurgarh for the last 15 years. He had one son Sudhir. He was married. He was unemployed. His daughter-in-law was working as Lecturer. Sudhir had appeared for agricultural examination in Gurgaon about three months ago. He met Rajbir son of Sher Singh. Rajbir started visiting Sudhir along with his nephew Manoj @ Susu. They used to take liquor together in the evening. They also used to quarrel. On 02.07.2013 Sudhir and Rajbir were to appear in an interview in Agricultural Department. They had gone to Railway Station, Bahadurgarh, to drop them. On the same date at about 8.00 P.M., Sudhir told him that he and Rajbir had consumed liquor. Rajbir was quarreling with him. He further told that at about 10.00 P.M. their bus would reach Bus Stand Bahadurgarh. He asked him to receive him. He along with his nephew Sangam went to the bus stand in his car at about 10.00 P.M. He found Sudhir, Manoj and Rajbir standing near the car. He requested Sudhir

to sit in the car. However, Rajbir and Manoj told him not to sit in the car. They made Sudhir to sit in their car on the pretext that since they had been selected in government job, they would celebrate their success. At about 11.00 P.M. Sudhir informed him telephonically that Rajbir and Manoj were again beating him. He feared that they might kill him. The phone was disconnected. He and his nephew Sangam continued to search Sudhir during the entire night. On the next day, i.e. 03.07.2013, he was informed telephonically that dead body of young person was found in Maya Vihar. FIR was registered. Body was sent for post-mortem examination. Site plan Ex.PW17/B was prepared. Accused were arrested. They made disclosure statements. Investigation was completed. Challan was put up after completing all the codal formalities.

4. Prosecution examined a number of witnesses. The statements of accused were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence, this appeal.

5. Learned counsel appearing for the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the judgment and order dated 12.02.2016 and 15.02.2016.

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

8. PW-9 Dr. Dharambir had conducted the post-mortem examination. He led his evidence by filing affidavit Ex.PW9/D. He had

noticed following injuries on the body of the deceased:-

- “1. An lacerated wound of 4 x 3 cm on the parietal region of scalp, bleeding from the wound.*
- 2. A ligature mark of size 3.8 cm around the neck, black coloured leather belt tightly present around the neck, face swollen.*
- 3. A lacerated wound of 2 x 3 cm. on the right temporal region.*
- 4. Multiple abrasions of variable sizes on the many parts of body, brain, lungs, pleura are healthy and congested, stomach contain about 100 ml. semi digested food particles.”*

The cause of death in his opinion was due to asphyxia (constriction force around the wind pipe) due to strangulation and its complication nature. It was ante mortem in nature and sufficient to cause death in routine course of life. He also identified clothes of the deceased which were taken into possession after post-mortem.

9. PW-2 Ajit Rathee deposed that he was property dealer by profession. On 03.07.2013 he went to his plot at about 10.00/11.00 A.M. He found a dead body of unknown person. He was wearing light blue shirt, white *baniyan* and black pant, gray socks and black shoes. He had noticed injury on the dead body of the deceased. It appeared that the deceased was strangulated with the belt. However, in his cross-examination, he deposed that police informed him at about 10.00/11.00 A.M. about the presence of dead body in his plot. He received the telephone call at his house. Police

dictated him the application Ex.PW2/A. He reached the spot. Some police officials and villagers were present. Police searched the dead body.

10. PW-3 Anil Patwari prepared the site plan Ex.PW3/A.

11. PW-5 Anil Kumar had taken photographs.

12. PW-6 HC Sandeep deposed that he was posted at PS Line Par Bahadurgarh on 07.07.2013. Accused Manoj was taken out from the police lock up for interrogation. He made disclosure statement Ex.PW6/A. He retracted his previous disclosure statement which was recorded on 05.07.2013 about the concealment of one handle of broken baseball bat, voter ID and ATM card. He offered to get recovered one handle of broken baseball bat, voter ID and ATM card which he had concealed in Chhotu Ram Colony in vacant plot of Sher Singh. In his cross-examination, he deposed that accused was arrested on 05.07.2013 but he did not know from where he was arrested. He was not arrested in his presence. No private person was joined at the time of interrogation.

13. PW-8 Constable Amit Kumar deposed that accused Rajbir made a disclosure statement. He retracted his previous disclosure statement which he made before the police on 05.07.2013. He offered to get recovered i10 car no.HR-13E-4372 which was parked in his plot. He also offered to get recover the baseball handle and ATM card. In his cross-examination, he deposed that no independent witness was joined at the time of interrogation.

14. PW-12 Sangam Pawar is a material witness. He deposed that Sudhir was his cousin. He had developed friendship with one Rajbir resident of village Parnala about 3 months back. He used to visit the house of his maternal uncle Anand, father of Sudhir, very often. Sudhir and Rajbir

used to consume liquor sometimes. They were selected for the post of Accountant in Haryana Agricultural University, Hisar, on 02.07.2013. He along with his uncle Anand had gone to drop Sudhir at Railway Station, Bahadurgarh. Rajbir was also present there. When they were coming back, they had started consuming liquor in the bus itself. On 02.07.2013 at about 7.00 P.M. telephonic call was received from Sudhir that they would reach Bahadurgarh by bus at about 10.00 P.M. He was also present in the house of his uncle Anand at that time. At about 10.00 P.M. he and his uncle Anand had reached Bus Stand, Bahadurgarh. They found Sudhir, Rajbir and one Manoj standing at the bus stand, Bahadurgarh. They asked Sudhir to accompany them in the car. Rajbir and Manoj resisted them by saying that they had been selected for the government job and they would not let Sudhir to accompany them since they wanted to celebrate their selection. Thereafter, they came home. At about 11.00 P.M. Sudhir made a telephone call to his uncle Anand saying that Rajbir and Manoj were beating him and they would kill him. He and his uncle went to search Sudhir, Rajbir and Manoj. At about 1.00/2.00 A.M. telephonic information was received that dead body of a young boy was lying at Maya Vihar, Bahadurgarh. In his cross-examination, he admitted that he had not got recorded in his statement to the police that Sudhir and Rajbir were selected for the post of accountant in Agriculture Department, Hisar. He had also not got recorded in his statement to the police that he and his uncle Anand Kumar had gone to Railway Station, Bahadurgarh to drop Sudhir. He further stated that Rajbir and Manoj forcibly took Sudhir with them in their car inspite of resistance from their side.

15. PW-13 ASI Chand Ram had proved computer generated call details Ex.PW13/B. He had sent the request to the concerned telecom company to provide call details. In his cross-examination, he admitted that the company official had not put the signatures on the call details.

16. PW-14 ASI Anil Kumar deposed that accused made disclosure statements on 07.07.2013. Accused Manoj got recovered a broken baseball bat and voter card of deceased Sudhir. These were taken into possession. Accused Rajbir also got recovered a handle of baseball bat and ATM card of the deceased.

17. PW-16 Anand Kumar is another material witness. According to him, his son was unemployed. He had gone to Gurgaon for giving some written examination in Agriculture Department three months prior to the occurrence. He came in contact with Rajbir. Rajbir and Sudhir became friends. Rajbir and his nephew Manoj used to come to their house on his car bearing registration no.HR-13E/4372. They used to take liquor. They used to fight with each other. His nephew Sangam used to come to their house. On 02.07.2013 Rajbir and Sudhir had to appear in an interview for the post of Accountant in Agriculture Department, Hisar. He along with his nephew Sangam went to drop them at Railway Station at about 6.00 A.M. At about 8.00 P.M. he had received a mobile call from his son Sudhir. He told them that they had again consumed liquor. Rajbir was quarreling with him. He asked him to receive him at Bus Stand, Bahadurgarh at 10.00 P.M. He and his nephew Sangam reached at bus stand. He saw that his son Sudhir, Rajbir and Manoj were standing near the car. He requested Sudhir to sit in his car. However, accused Rajbir and Manoj resisted them. They told him that they

had passed the interview. They wanted to celebrate their success. Thereafter, Rajbir, Sudhir and Manoj went to village Parnala. At about 11.00 P.M. Sudhir made a call to him and stated that they had consumed excess liquor. He had apprehension that Rajbir and Manoj could kill him. Thereafter, mobile was disconnected. He and his nephew Sangam tried to locate Sudhir. On 03.07.2013 in the evening, he received a telephone call from the police that a dead body was lying in the area of Madhu Vihar, Bahadurgarh. In his cross-examination, he deposed that police recorded his statement in the evening on 03.07.2013. He admitted that he had not recorded in his statement that he along with his nephew Sangam went to drop Sudhir and Rajbir to the Railway Station, Bahadurgarh in the morning on 02.07.2013. He did not get recorded in his statement to the police that on the next day in the morning, he made a telephone call to Rajbir in which Rajbir told that Sudhir was taking rest in his house and he was in Delhi and he would send him. When he met them at the bus stand, he did not force his son Sudhir not to accompany them although Sudhir had mentioned regarding quarreling in the bus with Rajbir and Manoj. They did not inform the police in this regard in spite of the fact that his son Sudhir had informed him regarding his apprehension that the accused might murder him.

18. PW-17 Inspector Ombir Singh went to the spot. He found that a belt was tied around the neck of deceased. He lifted one mobile phone of Sudhir along with a broken SIM. He also collected battery of mobile phone, one handkerchief, piece of handle of baseball bat, a black blood stained rubber and blood stained soil. Accused also got recovered one handle of baseball bat along with ATM card and Voter card of Sudhir. Car was also got

recovered by them. In his cross-examination, he deposed that parents of the deceased Sudhir had reached in the police station for reporting the matter regarding missing of Sudhir and where police officials had told them about the dead body which was lying in Maya Vihar, Bahadurgarh. They were not called by the police from their houses. No independent witness was joined at the time of interrogation of accused on 07.07.2013.

19. The FSL report is Ex.PX. Exhibit-1 (mobile), exhibit-2 (blood stained earth), exhibit-3 (piece of wood), exhibit-5 (piece of rubber), exhibit-6(belt), exhibit-7a (shirt), exhibit-7b(pants) and exhibit-7c(banian) were stained with blood stains. Blood was detected on exhibit-4 (blood stained earth), exhibit-7d(underwear) and exhibit-8(bat). Blood could not be detected on exhibit-7e(socks). Traces of blood too small for serological analysis were detected on exhibit-7f(shoes) and exhibit-9 (piece of bat).

20. The cause of death of the deceased was due to strangulation. The post-mortem report was duly proved by PW-9 Dr. Dharambir.

21. The case of the prosecution is that Sudhir had informed his father to come and receive him at about 10.00 P.M. at Bahadurgarh Bus Stand. His father PW-16 Anand Kumar and PW-12 Sangam Pawar went to the bus stand. They requested him to sit in the car. However, this move was resisted by the accused. Sudhir sat in the car of the accused and went towards village Parnala.

22. PW-16 Anand Kumar deposed that he had seen his son Sudhir, Rajbir and Manoj standing near the car. He requested his son to sit in the car but Rajbir and Manoj resisted him. Thereafter, Rajbir, Sudhir and Manoj went to village Parnala. At about 11.00 P.M. Sudhir had made a call to him

from the mobile of Rajbir and stated that they had consumed liquor and he had apprehension that Rajbir and Manoj could kill him. In his cross-examination, he deposed that when he met them at the bus stand, he did not force his son Sudhir not to accompany them, although Sudhir had mentioned regarding quarreling in the bus with Rajbir and Manoj. They did not inform the police inspite of the fact that his son Sudhir informed him regarding apprehension that he could be killed. Similarly, PW-12 Sangam Pawar had deposed that he and his uncle Anand had gone to Bus Stand, Bahadurgarh at 10.00 P.M. They saw Sudhir standing with Rajbir and Manoj at the bus stand. They asked Sudhir to accompany them in the car but Rajbir and Manoj resisted.

23. It has come on the record that some quarrel had also taken place between Manoj, Rajbir and Sudhir and this fact was within the knowledge of his father PW-16 Anand Kumar. But despite that they had let Sudhir to go with accused in the car. PW-12 Sangam Pawar had deposed that Rajbir and Manoj had forcibly taken Sudhir with them. Anand Kumar and Sangam Pawar should have resisted the move by not permitting Sudhir to go in the company of accused when they had already consumed liquor and they were quarreling with each other. According to PW-16 Anand Kumar, he received a telephone call of his son Sudhir that he was apprehending threat from the accused. If that was so, he should have immediately informed the police. He did not inform the police and he along with his nephew Sangam came back home. According to PW-12 Sangam Pawar, when they did not find Sudhir, they came back home. At about 1.00/2.00 A.M. telephonic information was received by his uncle Anand that

dead body of a young boy was lying at Maya Vihar, Bahadurgarh. They went to the spot. Police had already reached there. PW-16 Anand Kumar deposed that on 03.07.2013 in the evening he received a telephonic call from the police that a dead body was lying in the area of Madhu Vihar, Bahadurgarh. Thereafter, they went to the spot. However, PW-17 Inspector Ombir Singh deposed that parents of deceased Sudhir reached in the police station for reporting the matter that Sudhir had gone missing. Police told them about the dead body lying in the Maya Vihar, Bahadurgarh. They were not called by the police from their house. According to PW-16 Anand Kumar, police informed him about presence of dead body, however, PW-17 Inspector Ombir Singh deposed that the parents of deceased had come to lodge the missing report. The conduct of PW-12 Sangam Pawar and PW-16 Anand Kumar is unusual. They were not expected at all to leave Sudhir in the company of accused when they knew that they were quarreling with each other. They had gone to Railway Station Bahadurgarh in car. When Sudhir was taken away by the accused in their car, they could at least chase the car or could go to the police station. The prosecution has not attributed any motive to the accused except that they used to consume liquor and quarrel with each other. The cause of death, as noticed hereinabove, was strangulation but the police had got recovered baseball bat which is not connected to the crime. It was expected from PW-16 Anand Kumar when he received telephonic call at 11.00 P.M. that his son Sudhir was apprehending threat to his life, he should have informed the police.

24. Accordingly, the appeal is allowed and the judgment and order dated 12.02.2016 and 15.02.2016 are set aside. The appellants are acquitted

of the charges framed against them by giving them benefit of doubt. The appellants are in custody. They are ordered to be released forthwith if not wanted in any other case. Release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 31, 2019.
Davinder Kumar

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