

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

CRA-D-337-DB-2018 (O&M)
Reserved on : May 27, 2019
Date of Decision: July 03, 2019

Inderpal @ Sonu ...Appellant

Versus

State of Haryana ...Respondent

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

Present: Mr. Manoj Tanwar, Advocate for the appellant.
Ms. Shubhra Singh, Addl. AG, Haryana.

HARINDER SINGH SIDHU, J.

This appeal is instituted against the judgment and order dated 07.03.2018/09.03.2018 rendered by the Additional Sessions Judge, Mewat in Sessions Case No.529 of 2015 whereby the appellant, who was charged with and tried for offence punishable under Section 201, 302, 364, 392 and 120-B of the Indian Penal Code (in short 'IPC'), has been convicted and sentenced as under:-

<i>Offence U/S</i>	<i>Rigorous Imprisonment</i>	<i>Fine</i>
302 IPC	Imprisonment for Life	Rs.80,000/-
364 IPC	Ten years	Rs.20,000/-
395 IPC	Five years	Rs.10,000/-
120-B IPC	Imprisonment for Life	Rs.5,000/-

In default of payment of fine, the appellant is to undergo further imprisonment for a period of one year. The sentences were ordered to run concurrently.

2. The other co-accused namely Dalip, Rahul Puri and Vijay @Neeraj were declared as juveniles and sent to the Juvenile Justice Board for trial.

3. The case of the prosecution in a nutshell is that on 22.03.2015 one Samsuddin son of Bagdal resident of Padheni, P.S. Tauru went to the PP City Tauru and got recorded his statement before ASI Rajender. He stated that his nephew Imran Khan son of Sohrab Khan was working as a driver on Swift Dzire car Reg.No.HR-27B-5911 owned by Ashok Kumar s/o Om Parkash, Ward No.6, Tauru. On 19.3.2015 at around 5.00 pm Imran Khan spoke to Ashok Kumar and informed him that he had received a booking for Khairtal (Rajasthan) and sought his permission to go. Ashok Kumar told Imran Khan that if the persons booking the car were known to him then he may go. He stated that this information had been given to him by Ashok Kumar. Imran Khan left in the evening. At about 6.00 pm he called his younger brother Sahid Khan on phone to inform him that he was going to Khairtal on booking and would not return that day. But Imran Khan did not return for the next two days. Samsuddin stated that he suspected that some unknown persons had kidnapped Imran Khan and murdered him. Based on the statement FIR under Section 364 IPC was registered. The matter was investigated. Later the police received information about the presence of an unclaimed body lying in the mortuary of CHC Bansur, Rajasthan. This body was identified to be that of Imran Khan. It was taken into custody by the Haryana police and delivered to CHC Nuh where the post mortem was conducted. Thereafter offence under Section 302 IPC was added and the matter was investigated further. The accused were arrested. They suffered

without number plate, seat belt, number plate of the car and other articles were recovered. Challan was filed after completing all the codal formalities.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded his false implication. However, he did not lead any evidence in his defence.

5. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 Samsuddin stated that his nephew Imran son of Sh. Sohrab was employed as a driver by Ashok son of Sh. Om Parkash, resident of ward No.6, Tauru on Swift Dzire bearing registration No.HR-27B-5911. On 19.5.2015 some unknown persons came to Imran to hire the aforesaid vehicle for going to Khairtal (Rajasthan) in order to attend a marriage. Imran sought permission from the owner Ashok who allowed him to go. Imran telephonically informed his brother Sahid Khan that he would not return on that day but would come the next day.

8. As Imran did not return on the next day they searched for him. His cell phone was found switched off. He (Samsuddin) went to the police on 22.3.2015. His statement Ex.PW1/A was recorded which bears his signature. Police informed that they had received information about a dead body lying in mortuary of CHC, Bansur, Rajasthan. He along with his brother Sohrab Khan and the police reached CHC, Bansur. They identified dead body of Imran. Throat of Imran had been cut. Police came to CHC,

Nuh along with dead body of Imran. Postmortem examination was

conducted. Police again recorded his statement. Police handed over the dead body of Imran to them vide memo Ex.PW1/B. In cross examination he admitted that he had no personal knowledge of the involvement of the accused in the present case.

9. PW2 Sohrab stated that his son Imran was employed as a driver by Ashok son of Sh. Om Parkash resident of ward No.6, Tauru, on Swift Dzire bearing registration No.HR-27-B-5911. On 19.5.2015, some unknown persons came to Imran to hire that vehicle for going to Khairtal (Rajasthan) in order to attend a marriage. Imran was granted permission by the owner to go. Imran went to Khairtal. He telephonically informed his brother Sahid Khan that he would not return that day but would come the next day.

10. As Imran did not return the next day a search was made for him. His cell phone was found switched off. His brother Samsuddin went to the police on 22.03.2015 and lodged the report. Police informed them that they had received information about a dead body lying in mortuary of CHC Bansur, Rajasthan. Sohrab along with his brother Samsuddin and the police reached CHC, Bansur. They identified dead body of Imran. Throat of Imran had been cut. Police came to CHC, Nuh along with dead body of Imran, where postmortem examination of dead body of Imran was conducted. Police recorded their statements. The dead body of Imran was handed over to them vide memo Ex.PW1/B.

11. PW3 Ram Avtar resident of village Gurawara, Tehsil and District Rewari stated that on 20.03.2015, Rahul Puri made a call to him and asked about his whereabouts. He replied that he was at his house. Rahul Puri asked him to come to Bus Stand Gurawara where he (Rahul Puri) would

be waiting. Ram Avtar reached there and found that Rahul Puri was standing adjacent to a white colour car. Rahul Puri asked him to park that vehicle in his (Ram Avtar's) house as he had to go to Jaipur. Rahul Puri was accompanied by a few persons but he could not see them. He however did not get that vehicle parked in his house due to non-availability of proper space. Thereafter Rahul Puri went away on the car. He received call from Rahul Puri on his mobile phone No.8396806796. He knew Rahul Puri as they had worked together at Airport. He stated that he could not tell whether the accused present in the Court had accompanied Rahul Puri. He also could not tell the make and registration number of white colour car. On the request of the Public Prosecutor he was declared hostile and allowed to be cross-examined. He denied having made any statement to the police.

12. PW4 Ashok Kumar stated that he knew Imran as a friend. On 19.3.2015 Imran had taken his car bearing registration No.HR-27B-5911 for two- three hours. Thereafter, he did not know anything about this case. He was declared hostile and allowed to be cross examined.

13. PW5 Captain Haji Mehmood stated that on 24.03.2015 he joined investigation with ASI Rajender Singh Incharge police post Tauru and went to the spot. Police lifted blood stained earth from the spot and converted it into parcel with the seal of 'BS' which was taken into possession by the I.O. vide recovery memo Ex.PW5/A. On the same day the I.O. also lifted one slipper (Chappal), which was converted into parcel and taken into possession vide recovery memo Ex.PW5/B. The memos were attested by him and Sahabuddin as attesting witness.

14. PW6 HC Pawan Kumar stated that on March 26, 2015 he was

posted at Police Station Tauru as Constable. On that day Inspector Ashok Dahiya interrogated accused Vijay and Rahul. They suffered disclosure statements (Ex.PW6/A and Ex.PW6/B) in his presence. He identified the accused in the Court. He also stated that his statement was recorded by the Investigating Officer.

15. PW8 Constable Ajay Kumar stated that on 28.5.2015 he was posted at Police Station Tauru. Daya Kishan MHC handed over to him sealed parcels vide RC No.338 dated 28.5.2015 to deposit the same in FSL Madhuban. He deposited the said parcel in the office of FSL Madhuban at about 12.00 noon the same day and handed over the receipt to MHC after return.

16. PW9 Constable Anil stated that on 30.3.2015 he was posted as Constable in Police Station Tauru. That day accused Inderpal, Vijay, Rahul Puri and Dilip Patel were interrogated by SHO Ashok Kumar. During interrogation they admitted their earlier disclosure statements to be correct. The IO had shown the call details of his Mobile phone bearing No.8607813772 to them. Disclosure statement of Inderpal is Ex.PW9/A. Accused Vijay was also interrogated. During interrogation he suffered disclosure statement Ex.PW9/B. He admitted his earlier disclosure statement to be correct and call details of his Mobile No.7891077140 were shown to him. Accused Rahul Puri suffered disclosure statement Ex.PW9/C admitting his earlier disclosure statement to be correct and call details of his Mobile No.9716434841 were shown to him. Accused Dilip Patel suffered disclosure statement Ex.PW9/D admitting his earlier disclosure statement to be correct and call details of his mobile No.7877254420 were shown to

him. He and constable Sanjay attested the above said memos.

17. PW10 Dr. Anil Kumar stated that on 23.03.2015 he conducted the postmortem examination of deceased Imran. The copy of PMR is Ex PW 10/C. In his opinion the cause of death was hemorrhage and shock due to cutting of major blood vessels of the neck which were sufficient to cause death in the ordinary course. He opined that the duration between injury and death was within minutes. Duration between death and postmortem was 3-4 days.

18. PW11 Constable Sanjay Kumar stated that on 29.3.2015 he was posted as Constable at Police Station Tauru. That day accused Dilip Patel, Inderpal, Vijay and Rahul Puri were interrogated by the SHO. On interrogation, they suffered their disclosure statements. Accused Dilip Patel got recovered one knife which was taken into possession vide recovery memo Ex.PW11/C. The sketch of the knife was prepared which is Ex.PW11/A. Sketch of another knife and cover Ex.PW11/B was also prepared. Accused Inderpal got recovered Swift Dzire car which was taken into possession vide recovery memo Ex.PW11/D. Accused Dilip Patel and Inderpal also got demarcated the place of occurrence vide demarcation memo Ex.PW11/E.

19. On 30.3.2015, accused Inderpal, Vijay, Rahul Puri and Dilip Patel were interrogated. They suffered disclosure statements Ex.PW9/A to Ex.PW9/D respectively. The disclosure statements were attested by him and constable Anil as attesting witnesses and memos were attested by him and EASI Jagdish as attesting witnesses. He identified the accused present in Court.

20. PW12 HC Arun Kumar stated that on 23.03.2015 he was

posted at Cyber Cell DPO Nuh. That day an application for obtaining the

Call Detail Records (CDRs) of Mobile No.9991689166 from 17.03.2015 to 23.03.2015 was moved by the SHO, P.S. Tauru. Mail was sent to Nodal Officer of Vodafone. Reply from the Nodal Officer along with CDR was received. The print out of the CDR of Mobile No.9991689166 is Ex.PW12/A. He went through the CDR and found a suspected number 7742621155. He sent a request to the Nodal Officer for the CDR of mobile No.7742621155. He received CDR via email. The print out of the CDR is Ex.PW12/B. From the said CDR he found that the number 7742621155 was used within the area of Tauru on 18 & 19.03.2015. The said number was used by mobile phone having IMEI Number 356842050881830. He called for the record of above IMEI number. The print out of IMEI number is Ex.PW12/C. In the CDR of IMEI number he found that two numbers 8607813772 and 7891077140 were used. He then obtained CDR of 8607813772 and 7891077140. The Customer Application Form of the number 8607813772 is ExPW12/D and CDR is ExPW12/E. The said number was found to have been used at Mattur Road, Khairtal at about 10.02 PM near the place where the dead body was found. He also received the CDR of mobile number 7891077140 ExPW12/F. The said mobile number was used in the mobile phone bearing IMEI number 356842050881830. On 19.06.2015 mobile number 7891077140 made calls to 7877255420 and 9716434841. He sent mail to the Nodal Officer Aircel and Reliance Communication for the CDR of 7877255420 & 9716434841. The print out of the CDR is Ex. PW12/G & Ex.PW12/H.

21. PW13 HC Jai Singh stated that on 27.03.2015 accused Inderpal and Dalip Patel were interrogated by SHO/IO. On interrogation, they

suffered their disclosure statements Ex.PW13/A and Ex.PW13/B which he

signed as attesting witness. His statement under Section 161 Cr.P.C. was recorded by the I.O. He identified accused Inderpal in Court.

22. PW14 ASI Dinesh Kumar stated that on 26.03.2015 he arrested accused Inderpal and Dalip Patel vide arrest memos Ex.PW14/A and Ex.PW14/B respectively. On 27.03.2015 he interrogated accused Inderpal and Dalip who suffered disclosure statements Ex.PW13/A and Ex.PW13/B which were attested by HC Jai Singh as attesting witness. Both the accused signed the same in token of its correctness. He identified accused Inderpal in Court.

23. PW15 Inspector Mahesh Kumar stated that on 03.06.2015 he was posted as Inspector /SHO P.S. Tauru. After completion of the investigation he prepared the report under Section 173 Cr.P.C. against the accused Rahul Puri, Vijay, Dalip Patel and Inderpal which bears his signatures.

24. PW16 SI Balwant Singh stated that on 22.03.2015 he was posted at P.S. Tauru. A *Tehrir* written by Rajender Singh ASI was received in P.S. Tauru on which he registered formal FIR Ex.PW16/A.

25. PW18 Dharampal stated that on 25.05.2015 he was posted at S.P. Office Mewat. On the request of ASI Rajender Singh he visited the spot and prepared scaled site plan Ex.PW18/A.

26. PW19 Sub Inspector Rajinder Singh stated that on 22.3.2015 he was posted as Incharge of Police Post Tauru. Complainant Samsuddin came to him and recorded his statement Ex.PW1/A which was attested by him and an endorsement (Ex.PW19/A) was made over it. Thereafter it was sent through Constable Narbir Singh for registration of the case. On the same

day he along with complainant went to Bansur Rajasthan and found the dead

body in the hospital and prepared inquest report Ex.PW19/B.

27. On 23.3.2015 dead body was brought to CHC Nuh. He moved an application Ex.PW10/B for conducting the postmortem of deceased Imran Khan. After postmortem the dead body was handed over to his family members vide receipt Ex.PW1/B. After postmortem he received parcel containing clothes of the deceased which was taken into possession vide recovery memo Ex.PW19/C.

28. On 24.3.2015 he visited the spot and prepared rough site plan Ex.PW19/D . He lifted blood stained earth from the spot converted into parcel and affixed three seals of 'BS' which were taken into possession vide recovery memo Ex.PW5/A. He also lifted one slipper from the spot and converted into parcel and sealed with the four seals of 'BS'. It was taken into possession vide recovery memo Ex.PW5/B which was attested by Sahabuddin and Captain Haji Mehmood as attesting witnesses.

29. PW21 Inspector Ashok Kumar stated that on 24.03.2015 he was posted as Inspector/SHO at P.S. Tauru. On that day he obtained the call details of various numbers and ID card and ration card of accused Inderpal and marksheet of middle class from Board of School Education Haryana vide recovery memo Ex.PW12/1. HC Arun Kumar signed as attesting witness upon the memo. On 25.03.2015, he arrested accused Rahul Puri and Vijay vide memo Ex.PW21/A and EX.PW21/B.

30. On 26.03.2015, accused Inderpal @ Sonu son of Lala Ram was arrested in this case vide memo Ex.PW12/A by ASI Dinesh Kumar. Accused Vijay and Rahul Puri were interrogated and they suffered disclosure statements Ex.PW6/A and Ex.PW6/B. Constable Pawan Kumar signed as

attesting witness. In pursuance of disclosure statements the accused demarcated the place of occurrence Ex.PW21/C. Accused got recovered one bag, passbook of Oriental Bank of Commerce of the deceased and PNB, Tauru as also an RC of vehicle bearing registration No.HR-27-B-5911 which were taken into possession vide recovery memo Ex.PW21/D. HC Netarpal signed as attesting witness. In pursuance of disclosure statement accused Vijay @ Neeraj got recovered one safety belt and number plate of vehicle bearing registration No.HR-27B-5911 from village Maheshwari which was taken into possession vide recovery memo Ex.PW21/E. Rough site plans of the place of recovery were Ex.PW21/F and Ex.PW21/G.

31. On 27.03.2015 he and ASI Dinesh Kumar interrogated the accused and they suffered disclosure statement Ex.PW13/A. Accused Dalip Patel suffered disclosure statement Ex.PW13/B. They admitted their involvement in the present case. In pursuance of disclosure statement accused Dalip got recovered one knife and one Khukri which were taken into possession vide recovery memo PW11/C. The sketch of knife Ex.PW11/A.

32. On 29.03.2015 in pursuance of disclosure statement dated 27.03.2015 accused led the police party to the place of occurrence at Bansur, District Alwar (Rajasthan). Memo prepared is Ex.PW11/E. Thereafter, accused led the police party to his village Maheshwari, Bhagwan Singh Colony where he got recovered Swift Dezire without number plate. Later on its registration number was identified as HR-27B-5911, which was taken into possession vide recovery memo Ex.PW11/D. ASI Jagdish and constable Sanjay signed the memo as attesting witness. He prepared rough

33. On 30.03.2015, accused suffered disclosure statement Ex.PW9/A. Constable Sanjay Kumar and Constable Anil signed as attesting witness upon the memo. Accused Inderpal signed upon the memo in token of correctness. He identified accused Inderpal present in Court.

34. The case is based on circumstantial evidence. From the evidence on record it is clear that the deceased Imran Khan was working as a driver on Swift Dzire owned by PW4 Ashok Kumar. This fact has been clearly deposed to by Shamsuddin PW1 and Sohrab PW2 the uncle and father respectively of the deceased. Both PW1 and PW2 stated that on 19th March, 2015 Imran had received a booking to go to Khairtal (Rajasthan) and he had been permitted to go by Ashok Kumar. He had telephonically informed his brother Sahid that he was going to Khairtal (Rajasthan) on a booking and would not come home that day but would come the next day. Though Ashok Kumar the owner of the Swift Dzire did not support the prosecution case on this point but he stated that on March 19, 2015 the deceased had taken his car bearing registration No. HR-27B-5911 from him. As deceased did not return for the next two days and his mobile phone was also found switched off PW1 Samsuddin lodged a report with the police based on which FIR under Section 364 IPC was registered at PS Nuh. Later the police received information about an unidentified dead body lying in the mortuary of CHC Bansur (Rajasthan). The body was identified as that of Imran Khan.

35. The accused on arrest suffered disclosure statements. The disclosure statement of accused Inderpal is Ex PW9/A, that of Vijay is Ex PW9/B, of Rahul Puri is Ex PW9/C and of Dilip Patel is PW9/D. Accused

Dalip Patel and Inderpal also got demarcated the place of occurrence as per

demarcation memo PW11/E. PW19 SI Rajinder Singh lifted blood stained earth from the spot which was taken into possession vide recovery memo Ex PW5/A.

36. Pursuant to the disclosure statement accused Dalip got recovered a knife and one Khukri which were taken into possession. Accused Vijay got recovered one safety belt and number plate of vehicle having registration No.HR-27B-5911 from village Maheshwari. Accused Inderpal got recovered Swift Dzire from Bhagwan Singh colony in his village Maheshwari. As per the FSL report blood was detected on both the knives and the blood stained earth.

37. The Investigating Officer collected the call detail records of the mobile phones used by the accused. Mobile phone No. 86017813772 which from the Customer Application Form Ex.PW12/D was identified as belonging to accused Inderpal was found to have been used at Bansur Road Khairtal at about 10.02 PM which is close to the place where the body of Imran Khan had been recovered. It is not the plea of the accused that the mobile phone did not belong to him, that it was not in his possession or that it had been stolen or misplaced. In the absence of any such explanation the Ld. Trial Court rightly held that this establishes the presence of accused at the scene of crime when the foul deed was done. The trial court has noticed that the call detail records show the pattern of movement of accused Inderpal as being close to the place of occurrence. The other important link in the chain is the the recovery based on the disclosure statement of accused Inderpal of the Swift Dzire car from in front of his house in his village Masheshwari.

prosecution were inadmissible in evidence as they were not accompanied by a certificate as per the provisions of Section 65-B(4) of the Evidence Act was also rightly rejected by the Trial Court by relying on **Sonu v. State of Haryana, (2017) 8 SCC 570** wherein it has been held that if such an objection is not taken at the time of marking the documents as exhibits it could not be permitted to be taken at a later stage. No such objection had been taken at the time of exhibiting the documents.

39. The relevant observations of the Hon'ble Supreme court are as under:

“32. It is nobody’s case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies.

The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.”

40. From the above it is clearly established that the accused had travelled in the Swift Dzire car driven by Imran Khan (deceased) on 19.03.2015 which had been hired to be taken to Rajasthan. He was present near the spot, where the deceased was done to death, immediately before that. This is established by the call detail records. The Swift Dzire car driven by the deceased was recovered from the front of the house of the accused in Maheshwari. He has furnished no explanation regarding the aforesaid facts. The circumstances clearly establish that the death was caused in consequence of the act of the accused and his accomplices.

41. There is no reason to interfere with the well reasoned judgment of the lower Court. Consequently there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 03, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No