

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

**CRA-D-1328-DB-2015
Reserved on : 11.02.2019
Date of decision : 26.02.2019**

Attar Singh and others

... Appellants

Versus

State of Haryana

... Respondent

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

Present: Mr.Vinod Ghai, Senior Advocate
with Mr. S.S. Sandhu, Advocate
for the appellants.

Mr. Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 11.08.2015 and 18.08.2015 rendered by the learned Additional Sessions Judge, Bhiwani, in Sessions Trial No.141 of 2014 whereby the appellants, who were charged with and tried for offences punishable under Sections 147, 148, 302, 201, 364 of the Indian Penal Code (in short 'IPC') read with Section 149 of the IPC, were convicted and sentenced as under:-

Under Section	Sentence
147/149 IPC	To undergo rigorous imprisonment for a period of two years.
148/149 IPC	To undergo rigorous imprisonment for a period of two years each.
302/149 IPC	To undergo rigorous imprisonment for a period of life and to pay a fine of Rs.10,000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of six months.
201/149 IPC	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

364/149 IPC	To undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2000/- each, and in default of payment of fine, to further undergo simple imprisonment for a period of one month.
-------------	--

All the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Vikas (PW-4) had lodged the report on 02.03.2014 at about 07.00 P.M. that his brother Ravinder had gone with Sandeep for recovery of fare of tractor. He had not come back. Sandeep told that Ravinder had accompanied him upto the shop and thereafter he had gone towards Harijan locality of the village. On 04.03.2014 complainant Vikas came to the police station and made statement to the effect that on 03.03.2014 he had filed missing report of his brother. When they were searching for his brother on 04.03.2014, his uncle Anil Kumar who was residing at Dadri told that Sandeep, Shiv Narain, Kamal, Naresh, Attar Singh, Bijender and Kedara @ Kedar Singh were beating Ravinder @ Chintu in the street. The incident had taken place at 07.00 P.M. on 02.03.2014. The motive behind the crime was that the deceased was owner of the tractor and had freight dealings with the accused persons. The FIR was registered. Arrests were made. Post-mortem of the dead body was got conducted. The investigation was completed. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. Five witnesses were examined by the appellants in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove the case against

the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-9 Dr. Sandeep has conducted post-mortem examination. He had noticed the following injuries on the body:-

“1. An incised wound was present on left temporal region of the skull posteriorly 5 cm x 2 cm x bone deep.

2. Multiple bruising were present on forehead anteriorly.

3. Three lacerated wound were present on right arm outer aspect of size 1-2 cm x 1 cm x bone deep, 2-1 cm x 8 mm diameter x skin deep, 3-oval 8 mm diameter with right elbow joint dislocation.

4. A lacerated wound was present on left arm above the elbow outer aspect with joint dislocation of size 2 cm x 1 cm x bone deep.

5. Two lacerated wound were present on right leg of size 1-3 cm x 1 cm x bone deep, 2-3 cm x 1.5 cm x bone deep.

6. Two lacerated wound were present on left leg of size 1-2 cm x 1 cm (knee), 2-1 cm x 1.5 cm x skin deep.

7. Multiple abrasions were present on bilateral hands, dorsal aspect.”

He proved the post-mortem report Ex.PX. The cause of death was asphyxia due to constricting and encircling force around the neck which was sufficient to cause death in ordinary course of nature and possibility of the strangulation cannot be ruled out. All the injuries were ante mortem in nature. In his cross-examination, he deposed that there was no injury around the neck except for the ligature mark. Strangulation could be possible other

than the rope in question. He was not sure that the deceased died due to strangulation. He could not specify the time that elapsed between death and post-mortem except that the post-mortem was done within 48 hours of death of the deceased and not beyond that.

8. PW-1 Anil Kumar deposed that he was residing at Charkhi Dadri for the last about 6/7 years. He went to his village Fatehgarh on 02.03.2014. When he was coming back, he saw in *Jod wali gali* that his nephew Ravinder was being administered beatings by Kamal, Shiv Narain, Attar Singh, Kedara @ Kedar Singh, Naresh, Bijender and Sandeep. He stopped his motor cycle. Accused persons stated that he should also be caught (*“isko bhi le lo”*). The accused also proclaimed that Ravinder should be killed today. They took Ravinder towards *Ghair*. Accused also threatened him. The deceased Ravinder had some money dealings on account of fare of tractor with the wife of Rajender. He ran away from the spot. He did not disclose this incident to any one due to fear. Thereafter he came to know that missing report of Ravinder had been lodged by his brother Vikas. His statement was recorded by the Investigating Officer Ex.PF/1. In his cross-examination he has admitted that Ravinder was having tractor but he did not know whether Ravinder was registered owner of tractor or not. The dead body was taken out on 05.03.2014. He did not state to the police that when he stopped motor cycle, the accused persons had proclaimed that he should also be caught. He did not state to the police that accused proclaimed that Ravinder should be killed and they took Ravinder towards the *Ghair*. The accused had not threatened him. He did not state to the police that Ravinder had money dealings on account of fare of the tractor with the wife of Rajender. He was confronted with the statement

Ex.PF/1 wherein “because of fear” is not mentioned. Vikas and Ravinder were having mobile cells. The house of ex-Sarpanch Dhare was on the turning of the street at a distance of 100 meters. He had not raised any alarm. He was on the spot for few seconds. He had not told about the occurrence of 02.03.2014 to anybody in between 02.03.2014 to 04.03.2014.

9. PW-3 Om Parkash SI deposed that accused Attar Singh and Kedara @ Kedar Singh were arrested by SHO Jai Singh on 05.03.2014. Attar Singh made a disclosure statement Ex.PG. Kedara @ Kedar Singh made a disclosure statement Ex.PH. In his cross-examination he admitted that he had summoned Sarpanch, Panch and Lambardar of the village but none came on the spot. Volunteered that Chowkidar was present. He did not remember the names of Sarpanch, Panch and Lambardar of the village summoned by him. He recorded the statement of PW Anil Kumar in the village but he could not state where the statement was recorded in the village. He did not remember whether he recorded the statement of PW Anil Kumar at his house or at the spot. On the basis of disclosure statement of Attar Singh, dead body was recovered. Nothing was recovered on the basis of disclosure statement of Kedara @ Kedar Singh in his presence.

10. PW-4 Vikas is brother of the deceased Ravinder. He deposed that his brother used to ply tractor. His brother had gone with Sandeep in the village towards Harijan basti to collect the tractor fare from the villagers. Sandeep told him that Ravinder had gone with him upto the Karyana shop and thereafter Ravinder went towards Harijan Basti. When they were searching for Ravinder on 04.03.2014, his uncle Anil Kumar with whom they were not on speaking terms, met him. He told him that on 02.03.2014 at about 07.00/07.30 P.M. he had seen that Ravinder was being given

beatings by the accused. Ravinder had gone to collect tractor fare from Kamal. He could not tell the name of locality where his uncle Anil Kumar used to reside. He stated to the police that he was not on talking terms with PW Anil Kumar. He was confronted with the statement Ex.PB and Ex.PD wherein it is not so mentioned.

11. PW-5 Bansi Dhar ASI deposed that accused Attar Singh and Kedara @ Kedar Singh had made disclosure statements Ex.PG and PH. Accused were taken to village Fatehgarh. Attar Singh got recovered *danda*. Accused Sandeep was interrogated on 06.03.2014. His disclosure statement Ex.PM was recorded. He got recovered *danda* from the cattle shed. Accused Kamal was interrogated on 07.03.2014. His disclosure statement is Ex.PR. He got recovered plastic rope from his residential house. It was taken into possession vide Ex.PU. He admitted in cross-examination that pond in question was surrounded by residential houses on all the sides.

12. PW-8 Karambir deposed that accused Attar Singh came to the spot and pointed the police where the dead body was thrown in the pond.

13. PW-10 Ashok Kumar EASI deposed that Bijender and Naresh Kumar made disclosure statements Ex.PAA and Ex.PBB.

14. PW-11 Jai Singh SI deposed that he arrested Attar Singh and Kedara @ Kedar Singh on 05.03.2014. Attar Singh and Kedara @ Kedar Singh had come to the police station. They made disclosure statement Ex.PG and Ex.PH. Thereafter the accused Attar Singh got a *danda* recovered. Accused Sandeep was arrested on 05.03.2014. He made disclosure statement Ex.PM. He got the place, where the dead body was thrown, demarcated. One *danda* was also got recovered by him. Accused Kamal also made disclosure statement Ex.PR on 07.03.2014 on the basis of

which he got recovered plastic rope Ex.PKK. He admitted in his cross-examination that the place which was pointed out by the accused and where deceased was allegedly murdered was situated in the midst of the residential area of the village including houses of accused persons.

15. The motive attributed in the case is that the deceased Ravinder had gone to collect the fare of tractor. There is no evidence to prove that the deceased was owner of the tractor. The case of the prosecution is based on theory of "last seen together". According to the prosecution case, PW-1 Anil Kumar had seen the appellants administering beatings to the deceased Ravinder on 02.03.2014. The incident had happened according to PW-1 Anil Kumar on 02.03.2014 but he had not disclosed this fact to any person including PW-4 Vikas. His explanation was that due to fear he did not narrate this incident to anyone. However it is not so stated in his statement Ex.PF/1. He had remained on the spot, as per his cross-examination, only for few seconds. He has admitted that house of the ex-Sarpanch Dhare was on turning point. It was at a distance of 100 meters. He did not raise any alarm when so many people were beating Ravinder. He stated to the police that he stopped the motor cycle. The accused proclaimed that he should also be killed. It has come in the cross-examination that Vikas and Ravinder were having mobile cells and their numbers were fed in the mobile. His first reaction was to inform Vikas that his brother Ravinder was being beaten up by the appellants. The other material witness is PW-4 Vikas brother of the deceased. According to him, he met Anil Kumar with whom they were not on speaking terms on 04.03.2014. Anil Kumar told him that he had seen Ravinder being beaten up by the appellants. Since the relations between PW-1 Anil Kumar and PW-4 Vikas were strained, there was no occasion for

PW-1 Anil Kumar to tell him that he had seen his brother Ravinder being beaten up by the appellants on 02.03.2014 at about 07.00/07.30 P.M. According to him, he had stated to the police that they were not on speaking terms with PW-1 Anil Kumar. He was confronted with the statement Ex.PB and Ex.PD where it was not so recorded. The presence of PW-1 Anil Kumar in the village is also doubtful in view of the statement of PW-3 Om Parkash SI. According to him, he recorded statement of PW Anil Kumar in the village but he could not tell where he recorded his statement exactly in the village. He did not remember whether the statement of Anil Kumar was recorded at his house or at the spot. In case he recorded the statement of PW Anil Kumar, he should have remembered the place. PW-4 Vikas could not tell the name of locality where his uncle Anil Kumar was residing whereas the same is behind the gas agency on Loharu Road Dadri. According to him, the police had recovered *danda* on the basis of disclosure statement made by Attar Singh Ex.PG and *danda* was also got recovered from the cattle shed on the basis of disclosure statement Ex.PM.

16. PW-9 Dr.Sandeep has deposed in examination-in-chief that cause of death was asphyxia and that strangulation with the rope could not be ruled out. In his cross-examination he deposed that he was not sure that the deceased died due to strangulation. He has proved copy of post-mortem report Ex.PX. The post-mortem was got conducted on 05.03.2014. The disclosure statement of accused Kamal Singh was recorded vide Ex.PR on 07.03.2014. The police moved an application seeking fresh opinion of the doctor who conducted the post-mortem examination on 02.04.2014 after the recovery of plastic rope from accused Kamal Singh. The doctor has given opinion on 02.04.2014 that the cause of death could not be ruled out due to

strangulation by nylon yellow rope. Why Kamal Singh would carry plastic rope and keep it in his house. He could easily dispose it of instead of keeping it in his house. According to the prosecution, the deceased had to take some money from the accused but there is no evidence to this effect. Even it has not come on the record that the deceased was owner of the tractor.

17. The case of the prosecution is that the deceased had left in the company of Sandeep Kumar on 02.03.2014. Sandeep Kumar accompanied him upto the Karyana shop. Thereafter the deceased went to Harijan basti. The prosecution has not examined Sandeep Kumar who was a material witness. The conduct of PW-1 Anil Kumar was unusual. He should have reported the matter to the police or informed PW-4 Vikas who was in his relation about beatings given to the deceased by the appellants. He has not even raised alarm when he had allegedly seen the appellants administering beatings to the deceased. The prosecution has failed to prove the charges against the appellants.

18. Accordingly the appeal is allowed. The judgment and order dated 11.08.2015 and 18.08.2015 are set aside. The appellants are acquitted of the charges framed against them by giving benefit of doubt. Appellant Attar Singh is in custody. He be released forthwith in this case. Other appellants are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

February 26, 2019.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No