

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

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**CRA-D-400-DB-2016 (O&M)
Date of Decision :24.09.2019**

Baldev

... Appellant

Versus

State of Haryana

...Respondent

(2)

CRA-D-423-DB-2016 (O&M)

Sukhdev and another

... Appellants

Versus

State of Haryana

...Respondent

(3)

CRA-D-309-DB-2016 (O&M)

Rajbir Singh

... Appellant

Versus

State of Haryana

...Respondent

**CORAM:HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. S.S.Majithia, Advocate for the appellant-Sukhdev

in CRA-D-423-DB-2016 and for the appellant-Baldev in CRA-D-400-DB-2016.

Mr. K.B.Raheja, Advocate for the appellant-Som Parkash in CRA-D-423-DB-2016.

Mr. Ashit Malik, Advocate for the appellant in CRA-D-309-DB-2016.

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY TEWARI, J. (ORAL)

These three appeals arise out of the judgment of conviction dated 15.03.2016 and order of sentence dated 16.03.2016 passed by the Additional Sessions Judge, Karnal. The appellants in the above mentioned appeals have been convicted and sentenced in FIR No.266 dated 26.07.2011 under Sections 302 and 201 read with Section 34 and 506 of the Indian Penal Code (for short 'IPC') and appellants Sukhdev and Som Parkash were also convicted for the commission of offence punishable under Sections 452 read with Section 34 and 506 of IPC.

2. As per the prosecution on 22.07.2011 at about 11:30, appellant No.1, Sukhdev, after taking liquor entered the house of the complainant (Om Parkash) and started misbehaving with the family members as well as the parents of the family. On hearing the noise, his son Mukesh Kumar (deceased) came out and asked them the reason for misbehaving, whereupon appellant No.1-Sukhdev assaulted the deceased with lathi. Thereafter, appellant No.2-Som Parkash who is uncle of Sukhdev, who was standing outside in the street with lathi also entered the house of the complainant and then both the appellants-Sukhdev and Som Parkash gave pushes to wife of the complainant as well as his parents and also misbehaved with them and gave beatings to deceased with lathis. They pulled out the wife of the complainant from the house by catching hold

of her hair and tore off her clothes. It was further alleged that reason for this bad blood was the fact that appellant No.1-Sukhdev had borrowed a sum of Rs.4000/- from deceased and Sukhdev was not returning the same despite repeated requests by the deceased. The complainant reached his home and when he came to know about the scuffle, he went to the appellants-Sukhdev and Som Parkash but they threatened him that they would not let his sons get government job(s) for which they had applied and would involve them in false case of teasing the sister of Sukhdev. At about 3:00 p.m., his son, Mukesh was going towards his fields and appellant-Sukhdev along with some unknown persons chased him and thereafter, whereabouts of the deceased was not known. He therefore expressed the apprehensions that the accused-appellants had done his son to death. On the basis of the above statement, DDR No.24 dated 23.07.2011 was recorded. On 24.07.2011, dead body of the deceased was recovered from the village pond. Consequently, later on said DDR was converted into the present FIR.

3. Appellant No.1-Sukhdev and appellant No.2-Som Parkash were arrested and sent up for trial and thereafter, appellants Rajbir and Baldev were also summoned under Section 319 Cr.P.C.

4. In order to prove its case, the prosecution had examined as many as 17 witnesses. After taking into consideration the evidence on record, the Additional Sessions Judge, Karnal, vide judgment dated 15.03.2016 convicted and all the appellants namely Sukhdev, Som Parkash, Baldev and Rajbir Singh and vide order dated 16.03.2016 sentenced them as under:-

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
302/34 IPC	R.I. for life	₹5000/- (₹ five thousand only) each	S.I. for 1 (one) year
201/34 IPC	R.I. for 3 (three) years	₹2000/- (₹ five thousand only) each.	S.I. for 6 (six) months

Besides above sentence, appellants, namely, Sukhdev and Som Parkash were also sentenced as under:-

<i>Offence</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
452/34 IPC	R.I. for one year	₹2000/- (₹ Two thousand only) each	S.I. for 3 (three) months
506 IPC	R.I. for 6 (six) months	₹1000/- (₹ One thousand only) each.	S.I. for 1 (one) month.

5. Aggrieved of the said judgment and order, the appellants have preferred the present appeals.

6. Learned counsel for the appellants have argued that this is a blind murder case and has been foisted upon the appellants only because of previous enmity. As per them the statements of the family members of the deceased are only manifestation of suspicion and the solitary last scene evidence is not fit to be believed. The last scene evidence is of Nirmal (PW-14) who stated that on 22.07.2011 he had seen appellants- Sukhdev and Som Parkash riding a motorcycle and Mukesh (deceased) had been sitting sandwiched between them and moving his arms and legs "hath per mar rha tha" and behind him Baldev Singh was also coming.

7. The precise argument raised by learned counsel for the appellants is that in his cross-examination this witness had admitted that he thereafter lived a normal life in the village; that his house was very close to the house of the deceased; that he was well acquainted with the family of the deceased but still he did not disclose to anybody about

what he had seen and came up with his statement for the first time almost 4 weeks later on 19.08.2011. Learned counsel for the appellants have further argued that this conduct of the witness is highly unnatural and incredible and apart from this there is no other evidence against the appellants.

8. Learned Deputy Advocate General has sought to defend the judgment and order passed by the trial Court and the testimony of PW-14. She has further stated that as per the mobile record, the appellants were near the scene of crime at the relevant time. This argument has been rebutted by learned counsel for the appellants by stating that once it was admitted that the appellants were residents of village Kalsora there was nothing unnatural that their location would be shown in village Kalsora itself. She has however accepted that apart from this there is no other evidence against the appellants.

9. In our opinion, the appeal must succeed.

10. The testimony of Nirmal Singh is hardly credible; he knows the victim well; he is living in the village; he knows that the victim is missing and he knows that the family of the deceased entertains a suspicion against the appellants, yet he does not disclose to anybody that he saw the deceased with the appellants and he saw the deceased in an agitated position. In fact, had it been so, he would have immediately alerted somebody, but not only did he not do that but also did not disclose this fact after the dead body was recovered and made a statement for the first time only on 19.08.2011. We are constrained to discard his testimony. There is no other evidence against the appellants.

11. The Supreme Court in **State of Rajasthan Vs. Chandgi Ram**

and others, (2014)14 SCC 596, while dealing with the child testimony has held that every witness is competent to depose unless he considers that he is prevented from understanding the question put to him or from giving rational answers by reason of tender age, extreme old age, disease whether body or mind or any other cause of the same kind. While relying upon its previous judgment in **State of Madhya Pradesh Vs. Ramesh and another**, (2011)4 SCC 786, it held as under:-

*“13. In this context, it is relevant to rely on a decision of this Court reported in **State of Madhya Pradesh v. Ramesh and another**, 2011(2) R.C.R. (Criminal) 582 : 2011(2) Recent Apex Judgments (R.A.J.) 397 : (2011)4 SCC 786 wherein it laid down as to how the evidence of a child witness should be assessed. Paragraphs 7, 11 and 14 which are relevant for our purpose, are as under:*

*"7. In **Rameshwar v. State of Rajasthan** this Court examined the provisions of Section 5 of the Oaths Act, 1873 and Section [118](#) of the Evidence Act, 1872 and held that (AIR p. 55, para 7) every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the court considers otherwise. The Court further held as under: (AIR p. 56, para 11)*

"11. ... it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness

may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate."

*11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide **Himmat Sukhadeo Wahurwagh v. State of Maharashtra.**)*

14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in

case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(Emphasis added)

14. To the same effect is the decision reported in Shivasharanappa and others v. State of Karnataka, 2013(3) R.C.R.(Criminal) 86 : 2013(3) Recent Apex Judgments (R.A.J.) 547 : (2013)5 SCC 705. Paragraph 17 can be referred to as under :

"17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable."

12. As has been culled out from the arguments raised by the counsel for the parties, coupled with the evidence on record, the instant case is based on the last seen evidence of PW-14, Nirmal Singh. As noticed, above, the conduct of the witness is not only unnatural but creates a dent in the prosecution case. As a co-villager, his silence for a

considerable long period i.e. nearly one month, leads us to the conclusion that the last seen theory in this case cannot stand judicial scrutinizing.

13. In view of the above, we allow all the three appeals and acquit the appellants of the charges framed against them. In case they are in jail they be released if not required in any other case. In case they are on bail, their bail bonds shall stand discharged.

14. Since the main case is decided pending CRM if any, stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

24.09.2019
pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No