

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

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**CRA-D-434-DB-2016(O&M)
Date of Decision : 27.8.2019**

Telu Ram alias Pala

..... Appellant

Versus

State of Punjab

..... Respondent

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

Present : Mr. Vishva Nath Sharma, Advocate
for the appellant.

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment of conviction and order of sentence dated 26.11.2015 passed by the Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the appellant was convicted under Sections 301 and 201 IPC and sentenced to undergo life imprisonment alongwith fine of Rs. 10,000/- and, in default thereof to further undergo RI for one year under Section 302 IPC, and to undergo RI for one year alongwith fine Rs.2,000/- and in default thereof to further undergo RI for one month under Section 201 IPC in case FIR No. 79 dated 5.8.2014, under Sections 364/302/201 IPC registered at P.S.

Balachaur.

2. As per the case of the prosecution, deceased Paramjit alias Jeena had come to visit his uncle (mother's brother) on 23.7.2014 at village Rurki Muglan, Balachaur. As per the complainant (maternal uncle of the deceased), the deceased spent the night at his house and left early in the morning at 6:00 a.m without informing anybody in the house. After one week i.e. on 31.7.2014 his mother came from her village Behram (which is stated to be 5 km away from village Rurki Muglan) to village Rurki Muglan asking the whereabouts of her son. The complainant informed her that Jeena had left his house on 24.7.2014 in the early morning. They both got worried and started searching for Jeena. On 3.8.2014, PW2-Hari Pal-son of the complainant happened to visit the house of the appellant (situated at 10 houses down in the street) and found that the chappals, which Jeena had worn, were lying over there. He picked up the chappals and brought them home. The complainant further stated that on the discovery of the chappals from the house of the appellant, a suspicion was arose. They held a meeting with the other villagers and decided to approach the police and this was the version given to the police after two days on 5.8.2014. The police then detained the appellant and on interrogation he disclosed that he had thrown the body of Jeena in an abandoned 'well' situated in the fields belonging to one co-villager, Avtar Singh. On the basis of this disclosure statement, the body of Jeena was recovered from that abandoned 'well'. The same had been stuffed in a plastic bag, but one of his feet remained stuck. By then, the body was badly decomposed and decayed. On postmortem having been conducted, the following injuries were found :-

1. An incised wound on the left side of neck region starting

from 4 cm from the middle of left clavicle, going medically upward and forward up to the lower jaw. Angle of the mandible was fractured with cut margins in the line with wound. The wound was deep up to the soft tissues, muscles and vessels in the neck.

2. An incised wound present in the upper lateral of the chest in front of the left axilla on the left side of chest with underlying muscles cut.

3. An incised wound present on the lower third of left arm, lateral side 6x4 cm with underlying humerus having sharp cut fracture.

4. An incised wound on anterior medical of lower third of right thigh 5x3 cm with soft tissues and muscles cut.

Scalp skin easily peeled off, brain tissues was soft and liquefied, spinal cord not opened.

3. Thereafter, the appellant was stated to have made another disclosure statement wherein he informed the police that he had hidden the pant worn by Jeena in the house of another co-villager Baldev Singh, which was also recovered from there. The alleged weapon of offence 'Gandassa' was also got recovered pursuant to the same disclosure statement. The appellant was sent up for trial and having been convicted, the appellant is before this Court.

4. During the trial the following witnesses were examined:-

PW-1 Charan Dass, PW-2 Hari Pal (son of Charan Dass), PW-3 Som Nath son of Ajit Singh, PW-4 Dr. Paramjit Lal, PW-5 Inspector Palwinder Singh, PW-6 Ct. Sandeep Kumar, PW-7 Gurmit Kaur wife of Bakshi Ram, PW-8 Darshan Lal s/o Mool Chand, PW-9 HC Amrik Singh, PW-10, Ct .Manjit Singh.

5. At this stage, we would like to go through the testimony of the mother of the deceased i.e. PW7-Gurmit Kaur, who stated that while

going to visit his uncle, Jeena had taken Rs.5000/- from her to get his passport prepared.

6. The first contention of the learned counsel for the appellant is that there is an inordinate delay in lodging the FIR. As per him, PW-2-Hari Pal s/o Charan Dass disclosed that his cousins (brothers of the deceased) also had mobile phones and they used to talk to each other. As per the learned counsel for the appellant, it is very strange that mother of the deceased would have waited for 7 days, once her son was missing. Not only that, even after the complainant and the other members realized that the boy had been missing for 7 days, they took 5 days more to lodge the FIR. Counsel for the appellant has further argued that another interesting feature is that as per the prosecution, on 3.8.2014 they discovered chappals of the deceased at the house of the appellant and thereafter also, they took 2 days to report the matter to the police. He has further pointed out the testimony of both PW1-Charan Dass and PW2-Hari Pal who testified that right from 31.7.2014 to 5.8.2014 the appellant had been leading his normal life in the village and that they both had met him on various occasions.

7. Learned counsel has further argued that PW2-Hari Pal at one stage stated that the deceased and Telu Ram had taken liquor together on 23.7.2014 and at another stage, he stated that he had also accompanied them while having liquor (in cross examination). As per the learned counsel, it is very strange that Jeena while leaving the house early in the morning on 24.7.2014, would not inform anybody that he was going, because after all he had come to his 'Nanke' (maternal grandparents' house). He has further argued that there was no reason for the appellant

to have secreted the trousers of the deceased in the house of Baldev Singh who incidentally was not brought in as a witness. As per him, the theory purported by the prosecution is that after the appellant killed the deceased in the morning of 24.7.2014 he stuffed the dead body in the bag and at night placed the body on the fuel tank of his motorcycle and took it to the well to dispose it off. He has pointed out to the improbability of a person single handedly transporting the body, which was stiffened up by *rigor mortis*, on a motorcycle and then throwing it into a well. He has argued that in a village the sound of motorcycle should have attracted attention even at night. Further, he has pointed out to the testimony of PW7-Gurmit Kaur, where she admitted that the chappals worn by the deceased had been of a very common kind and could be easily available in the market and that there was no identification mark which might distinguish the chappals of the deceased from any other similar chappals. He has argued that in this blind murder case, there are many circumstances which do not point to the guilt of the accused and has prayed that the conviction be set aside.

8. Learned counsel for the appellant has further argued that it is strange that Jeena would slip away from his uncle in the early morning and then go to the house of the appellant and that the appellant, with whom he had no enmity and rather with whom he had enjoyed liquor on the previous evening would murder him for no reason. The argument that Jeena was carrying Rs.5000/- does not appeal to reason. In the year 2014, when the offence was committed a sum of Rs.5000/- could hardly be called a substantial amount of money for which a person would murder another person; moreso, a friend, and why would the appellant hide the

trousers in the house of Baldev Singh is also beyond common comprehension. Was Baldev Singh an accomplice, and was he present when the recovery was made ? In normal circumstances, he would have been a natural witness to the recovery, but he did not appear before the Trial Court. As per the postmortem report, the deceased was a tall young man of 5' 10". It would be difficult to carry a stuffed body of such a person on a motorcycle single handedly.

9. As regards the delay, learned DAG has sought to argue that once Jeena had gone to his 'Nanke', it was hardly surprising that the mother did not feel much concerned for one week, but that is not all. Even thereafter, there is an unexplained delay of 5 days. Learned DAG has also laid much stress on the recovery of the dead body on the disclosure of the appellant. In our considered opinion, that is the only one circumstance which may be said to point to the guilt of the appellant but it is trite to say that in a case of circumstantial evidence, all the different pieces of evidence have to uniformly point towards the guilt of the accused before he gets convicted.

10. Learned DAG has further sought to defend the conviction by arguing that in a case of murder the close relatives would have a deep interest in ensuring that the real perpetrator gets punished but would be equally conscious of the fact that an innocent person is not roped in. In our opinion, there is no quarrel with this proposition but it does not answer the questions posed by the counsel for the appellant.

11. We have heard learned counsel for the appellant and learned State counsel and with their able assistance, have gone through the record of the case.

12. We find that in the present case, there are two disclosure statements, alleged to have been suffered by the appellant. On the basis of an earlier disclosure statement, the dead body had been recovered and later on Gandasa was recovered. It is difficult to digest as to what was the occasion for suffering the subsequent disclosure statement by the appellant leading to the recovery of the pant (trousers). In the entire evidence led by the prosecution, the pant in question had not been identified by any of the witness.

13. Another factor pointed out by the learned counsel for the appellant that the story regarding pair of chappals of the deceased had been introduced by the Investigating agency. The said chappals were noticed by PW2-Hari Pal in the house of the appellant on 3.4.2014 and were allegedly brought to the house of the appellant by the said witness. It will not be out of place to mention that PW1-Charan Dass and PW2-Hari Pal did not disclose regarding chappals for two days.

14. It is settled law that there cannot be a substitute for the proof of guilt of the accused beyond a reasonable doubt. Besides, in the present case, the chain of circumstances does not lead to an irresistible conclusion. Thus, in the absence thereof, the conviction of the appellant, as recorded by the trial Court, is not tenable in the eyes of law.

15. In **Sampath Kumar Vs. Inspector of Police, Krishnagiri, 2012(2) SCC (Crl.) 42**, the Hon'ble Supreme Court has held that where a case is based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established and that the chain of evidence must be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused

and must show that in all human probability, the act must have been done by the accused. It was held as under:-

“6. The legal position regarding the standard of proof and the test which the circumstantial evidence must satisfy is well-settled by a long line of decisions of this Court. It is unnecessary to burden this judgment by making reference to all such decisions. We are content with reference to some of those decisions. In *Sharad Birdhichand Sarda v. State of Maharashtra, (1984)4 SCC 116*, this Court laid down the following five tests to be satisfied in a case based on circumstantial evidence :

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

16. Consequently, the appeal stands allowed and we set aside the impugned order 26.11.2015. The appellant is directed to be set free. The bail/surety bonds produced by the appellant, if any, shall stand cancelled/discharged.

17. Since the main case has been decided, the pending C.M., if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

27.8.2019
anuradha

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