

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1644-DB-2015

Sanjay alias Dhillu

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-1727-DB-2015

Sunil and another

... Appellants

Versus

State of Haryana

... Respondent

3. CRA-D-2-DB-2016

Meenakshi

... Appellant

Versus

State of Haryana

... Respondent

4. CRA-D-9-DB-2016

Anil

... Appellant

Versus

State of Haryana

... Respondent

5.

CRA-S-177-SB-2016

Pawan

... Appellant

Versus

State of Haryana

... Respondent

Reserved on : 12.09.2019**Date of decision : 17.09.2019**

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

Present: Mr.Pardeep Singh Poonia, Advocate
for the appellant in CRA-D-1644-DB-2015.

Mr. Rakesh Nehra, Advocate
for the appellants in CRA-D-1727-DB-2015.

Ms.Deepa Singh, Advocate
for the appellant in CRA-D-9-DB-2016.

Mr.H.S.Grewal, Legal Aid Counsel
for the appellants in CRA-D-2-DB-2016 & CRA-S-177-SB-
2016

Mr.Vivek Saini, DAG, Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals have been instituted against the judgment dated 29.10.2015 and order dated 03.11.2015 rendered by the learned Additional Sessions Judge, Bhiwani, in Sessions Trial no.271 of 2014 whereby the appellants were charged with and tried for offences punishable under Sections 302, 201, 202, 120-B, 377 of the Indian Penal Code (hereinafter referred to as "IPC"). The appellants were convicted and sentenced as

under:-

Name of convict	Under Section	Sentence
Anil alias Bihari, Sunil alias Sulli, Sunil s/o Sajjan and Sanjay	302 IPC read with Section 120-B 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, the convicts shall further undergo simple imprisonment for a period of six months each.
	201 IPC read with Section 120-B IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/- each, and in default of payment of fine, the convicts shall further undergo simple imprisonment for a period of one month each.
Sunil alias Sulli and Sunil s/o Sajjan	377 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, the convicts shall further undergo simple imprisonment for a period of two months each.
Meenakshi	120-B IPC read with Section 302 IPC	To undergo rigorous imprisonment for a period of life and to pay a fine of Rs.10,000/- and in default of payment of fine, the convict shall further undergo simple imprisonment for a period of six months.
	120-B IPC read with Section 201 IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/-, and in default of payment of fine, the convict shall further undergo simple imprisonment for a period of one month.
Pawan	202 IPC	To undergo rigorous imprisonment for a period of six months.

All the sentences of accused Anil alias Bihari, Sanjay, Sunil alias Sulli, Sunil son of Sajjan and Meenakshi were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 30.06.2014, Dariya Singh (complainant) went to the police station and filed a complaint Ex.PGG, wherein it was stated that on 21.06.2014 his son Sandeep had gone from his house. He was seen in the company of Anil son of Chhaju Ram in a hotel, outside the village on 22.06.2014. Thereafter, on 25.06.2014 when they went to lodge a report about missing of Sandeep, police told them that a dead body was lying in PGIMS, Rohtak and they could see it. They went to PGIMS, Rohtak. They saw the dead body of Sandeep there. Meenakshi, his daughter-in-law, was having illicit relations with Anil son of Chhaju Ram. Due to this reason, quarrel took place in their house on many

occasions. However, Meenakshi did not mend her ways. Complainant suspected that Meenakshi and Anil conspired with each other and committed murder of his son. Investigation was completed. Challan was put up after completing all the codal formalities.

4. Prosecution examined as many as 25 witnesses in support of the case. The statements of accused were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The accused had examined one witness in their defence. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing for the appellants have 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 of the learned trial Court.

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

8. PW-1 SDO Mahender Pahal deposed that on 23.07.2014 police moved application Ex.PA. He gave his report Ex.PA/1 that Loharu Canal was continuously running with effect from 14.06.2014 to 28.06.2014. In his cross-examination, he admitted that he had not brought any record pertaining to his report Ex.PA/1. He prepared his report on the basis of Gauge Register and he had not brought the same.

9. PW-2 Ram Avtar, Patwari, had prepared site plan Ex.PB.

10. PW-5 ASI Bansidhar deposed that on 04.07.2014 Inspector Naresh Kumar received call details and ID of three mobile phones

nos. 9050380763, 9991442525 and 9471402764 vide recovery memo Ex.PE.

11. PW-6 HC Surender Singh deposed that accused Sunil alias Suli was arrested. He made disclosure statement Ex.PF.

12. PW-7 Ram Kisan deposed that accused Meenakshi was arrested. She made disclosure statement Ex.PG. Accused Meenakshi produced her mobile cell marka Samsung of black colour having a sim. The mobile cell was converted into a sealed parcel. Accused Sanjay was also arrested. He made disclosure statement Ex.PJ. Thereafter, accused pointed out the place where conspiracy was hatched. Memo Ex.PK in this regard was prepared. Thereafter, accused had shown the place where the deceased was sodomized. Memo Ex.PL was prepared. Accused also pointed out the place where the deceased was thrown in the canal after murdering him. A underwear and two dots of beer bottle of marka Kingfisher were lying at the spot where the deceased was sodomized. The same were taken into possession. Accused Anil alias Bihari was arrested. He was interrogated. He made disclosure statement Ex.PR. Anil got recovered motor cycle bearing registration no.HR19B-5196 which was used in the crime, along with registration certificate. Accused also got recovered mobile cell having sim nos.9991442525, 9050380763 of marka Samsung of white colour. Thereafter, accused Anil alias Bihari had shown the place where conspiracy was hatched. Accused also pointed out the place where deceased was sodomized. Memo Ex.PV was prepared. In his cross-examination, he deposed that the place where the deceased was sodomized was at a distance of about 500 yards from Dharam Kanta in question. The distance between the place where the deceased was sodomized and where he was thrown in the canal, was about 2 / 2½ kilometers.

13. PW-8 ASI Makhan Singh deposed that on 10.07.2014 accused Sunil alias Sulli was taken at the place of occurrence. Again said both accused namely Sunil @ Sulli and Sunil son of Sajjan were taken at the place of occurrence, i.e. Dharam Kanta. They pointed out place where they hatched conspiracy. Memos were prepared.

14. PW-9 Dariya Singh deposed that Meenakshi was wife of his son Sandeep. His son had gone to the fields. But he did not come back. They were enquiring whereabouts of Sandeep for 4-5 days. He came to know that Sandeep along with Anil son of Chhaju Ram was seen sitting at hotel behind the mountain. Sandeep was not traced out. They went to the police station to lodge missing report. Police told them that one unidentified dead body was lying in PGIMS, Rohtak. They went to PGIMS, Rohtak. The body was of his son Sandeep. Accused Anil was having illicit relations with accused Meenakshi. There used to be quarrel in the family. He moved an application Ex.PGG to the police. In his cross-examination, he admitted that he along with his nephew Ramesh and other villagers went to the police station to lodge the report in a private vehicle. He got typed application Ex.PGG. A petition for restitution of conjugal rights in the Court was filed. Thereafter, accused Meenakshi came to the matrimonial home. Meenakshi used to take mobile cell of Sandeep whenever he used to go outside. In his cross-examination by the counsel appearing on behalf of accused Anil, he admitted that he disowned his son Sandeep. He came to know about the death of his son Sandeep in the police station at 12.00 noon. He could not tell the exact date. He submitted application Ex.PGG on 25.06.2014.

15. PW-10 ESI Partap Singh deposed that accused Sunil son of Sajjan made disclosure statement Ex.PY.

16. PW-11 HC Suresh Kumar got the post-mortem of dead body conducted on 26.06.2014. In his cross-examination, he deposed that he recorded the statement of Om Parkash during the inquest proceeding at noon time. Neither Ramesh nor Dariya Singh were present at that time. They came in police station subsequently at 1.30 P.M.

17. PW-13 SI Attar Singh deposed that accused Pawan was interrogated. He made disclosure statement Ex.PMM. He also obtained call details of mobile cell no.8816953091.

18. PW-14 HC Anil Kumar deposed that accused Pawan was interrogated in his presence. He made disclosure statement Ex.PMM. SI Attar Singh also obtained call details of mobile number. Accused took the police party to the place where they took liquor. Demarcation memo Ex.PQQ was prepared.

19. PW-17 SI Shamsheer Singh deposed that he arrested accused Sunil alias Sulli. He made disclosure statement Ex.PF.

20. PW-21 Inspector Satish Kumar deposed that he arrested accused Meenakshi from village Mankawas. He took one mobile cell from her possession vide memo Ex.PH. Accused Sanjay @ Dhillu was arrested. He made disclosure statement Ex.PJ. He disclosed the names of his co-accused Anil alias Bihari son of Chajju, Sunil alias Sillu and Sunil son of Sajjan. Accused Sanjay alias Dhillu demarcated the place where they hatched conspiracy to kill Sandeep. Accused Sanjay also demarcated the place where deceased Sandeep was thrown in Loharu canal, Charkhi-Boora

Kheri Road. Accused Sanjay alias Dhillu, Sunil alias Sillu and Sunil son of Sajjan were taken out from the police lock up on 10.07.2014. They demarcated the place where conspiracy was hatched. They also demarcated the place where they consumed liquor and sodomized the deceased. Sunil alias Sillu and Sunil son of Sajjan were got medico legally examined. The medical officer after examination handed over him sealed parcels. Anil was also arrested on 10.07.2014. He made disclosure statement Ex.PR. Motor cycle along with RC was recovered. Anil took them to the places where the conspiracy was hatched, liquor was purchased, the deceased was sodomized and Sandeep was drowned in the canal. Accused was also got medico legally examined.

21. PW-22 C. Sunil Kumar deposed that he handed over the call details of mobile no.88169-53091 and 90507-77601 vide Ex.PW2/A. In his cross-examination, he categorically admitted that he did not know as to in whose name the sims of these mobile cells were issued and from where and on what dates.

22. PW-23 Ramesh testified that the deceased was the son of his uncle. Accused Meenakshi is wife of deceased Sandeep. On 21.06.2014, Sandeep had gone out but did not come back. On 22.06.2014, he saw Sandeep deceased along with Anil accused at a hotel. Anil and Sandeep were taking liquor. He asked Sandeep to come to the house. He replied that he would come back. But he did not return till 25.06.2014. They had searched Sandeep but he was not traceable. On 25.06.2014 he and his uncle Dariya Singh went to the police station Charkhi Dadri to lodge the missing report of Sandeep. They came to know from the police that a dead body was

lying in PGIMS, Rohtak. They went to the PGIMS, Rohtak. The dead body was of Sandeep. Autopsy was conducted. According to him, there was illicit relation between accused Anil and Meenakshi. In his cross-examination, he deposed that police recorded his statement on 25.06.2014 at about 2.00 P.M. in the police station. He admitted his signatures on Ex.DB. He also admitted his signatures on Ex.PKK. He was confronted with statements Ex.DB and Ex.DC.

23. PW-12 Dr.Parveen Kumar deposed that dead body was in advance stage of putrefaction. They referred the same to PGIMS, Rohtak, for post-mortem examination.

24. PW-16 Dr.Kamal Singla conducted the post-mortem examination. According to him, the cause of death was head injury as described in the post-mortem report. In addition, the deceased had consumed ethyl alcohol prior to his death. In his cross-examination, he deposed that no injury was found on the dead body except the head injury. The duration between the death and autopsy was 3 to 5 days. He could not give the exact date.

25. PW-15 Dr.Anil Kumar medico legally examined Sunil alias Sulli and Sunil son of Sajjan Singh. In his opinion, there was nothing to suggest that both the patients were not capable of performing sexual act. He proved MLRs Ex.PVV and Ex.PXX.

26. DW-1 Ram Parkash deposed that he knew Meenakshi. He knew entire family of Meenakshi. Sandeep used to take liquor. Therefore, there was some misunderstanding between Meenakshi and Sandeep. Sandeep was homosexual. Meenakshi left her matrimonial home. He called Dariya Singh,

father of Sandeep. He assured that Sandeep would behave properly. Thereafter, Meenakshi was sent to her in-laws but Sandeep did not improve himself.

27. The case of the prosecution precisely is that Sandeep went out of his house. He was seen by PW-23 Ramesh in the company of Anil on 22.06.2014. He asked him to come back. He did not come back. Thereafter, PW-9 Dariya Singh and PW-23 Ramesh went to the police station to lodge the missing report. They were told at the police station that body of young man was lying in PGIMS, Rohtak. They went there to identify the dead body of Sandeep. Further case of prosecution is that Meenakshi had illicit relations with Anil. Anil hatched conspiracy with co-accused to kill Sandeep. Anil and other co-accused except Meenakshi went to Dharam Kanta where conspiracy was hatched. Sunil alias Sulli and Sunil son of Sajjan sodomized the deceased. Thereafter, he was taken on motor cycle and thrown in the canal. He tried to come out of the canal but accused prevented him.

28. According to the prosecution, Sandeep died due to drowning. However, as per the statement of PW-16 Dr.Kamal Singla, Sandeep died due to a head injury. There was only one injury on head. According to FSL report Ex.PFF, no diatoms was detected in exhibit-6 (Sternum and Clavicle). Human semen was detected on exhibit-2 (underwear). However, no semen was detected on rest of the exhibits. According to FSL report Ex.PYY, Ethyl alcohol was detected in exhibits-1a, 1b and 1c. No common poison was detected in exhibit-1d.

29. PW-9 Dariya Singh lodged the report Ex.PGG wherein he

stated about illicit relation of Meenakshi with Anil son of Chhaju Ram. According to the prosecution case, there used to be quarrel in the house regarding the illicit relations of Anil with Meenakshi. In these circumstances, there was no occasion for Sandeep to be in company of Anil and to consume liquor. He would have definitely avoided his company. No sensible person would drink with paramour of his wife.

30. The prosecution case is also that the deceased was sodomized by Sunil alias Shulli and Sunil son of Sajjan. However, as per post-mortem report, there were no signs of sodomy.

31. The case of prosecution is also that Meenakshi used to talk with Anil on the mobile of her husband. A woman would not talk on her husband telephone with her paramour. Neither PW-5 ASI Bansidhar nor PW-22 Constable Sunil Kumar produced any certificate as required under Section 65 B of Indian Evidence Act. PW-22 Constable Sunil Kumar did not know about the veracity of sim cards. PW-23 Ramesh deposed that he had seen the deceased in the company of Anil. His statements were recorded vide Ex.DB dated 26.06.2014 and Ex.DC 02.07.2014. He has not mentioned anything about illicit relations of Meenakshi with Anil. It has come on record that Meenakshi had left the company of deceased. The petition under Section 9 of the Hindu Marriage Act was filed. According to DW-1 Ram Parkash, the matter was patched up and thereafter Meenakshi came back to her in-laws. According to the prosecution, conspiracy was hatched at Dharam Kanta. The role attributed to Sunil alias Sulli and Sunil son of Sajjan that they had sodomized the deceased, however there is no evidence to this effect. Doctor has only opined that they were capable to perform sex.

The role attributed to Pawan is that he had only consumed liquor with co-accused but has intentionally omitted to give information of commission of offence. The role attributed to Sanjay is that he was on motor cycle driven by Anil on which Sandeep was taken towards canal and he had also consumed liquor at Dharam Kanta.

32. The case is based on circumstantial evidence. The chain is not complete. The motive attributed in the present case was that there was illicit relations between Anil and Meenakshi. The prosecution has failed to prove the motive. There is no iota of evidence regarding conspiracy hatched by Meenakshi and Anil. The theory propounded by prosecution is also based on disclosure statement made by Meenakshi vide Ex.PG. The prosecution case is that Sandeep died of drowning. However, the fact of the matter is that Sandeep had not died of drowning. He died on receiving injury on his head. The prosecution has proved mobile no. 9471402764 belong to Meenakshi. The call details as noticed hereinabove have not been proved in accordance with law.

33. Now as far as Section 120-B IPC is concerned, the prosecution has not led any evidence about criminal conspiracy hatched between the appellants. Their Lordships of the Supreme Court in **State (Delhi Admn.) vs V. C.Shukla and another AIR 1980 SC 1382**, have held that in order to prove a criminal conspiracy which is punishable under Section 120- B IPC, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. Their Lordships have held as under:-

“8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal

conspiracy which is punishable under Section 120-B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to

discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film.”

34. The prosecution case is that the deceased was last seen in the company of appellant Anil to consume liquor by PW-23 Ramesh. There was no occasion for the deceased to consume liquor in the company of Anil if he knew that Anil was having illicit relations with his wife. In case if deceased was seen in the company of Anil on 22.06.2014, efforts should have been made to contact Anil by visiting his home either by PW-9 Dariya Singh or PW-23 Ramesh. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

35. Accordingly, the appeals are allowed. The judgment dated 29.10.2015 and order dated 03.11.2015 are set aside. Appellants are acquitted of the charges framed against them. Appellants Anil, Sunil and Sunil son of Sajjan are in custody. They be released forthwith. Their release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 17, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No