

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1825-DB-2014

Sonu

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-28-DB-2015

Satish and another

... Appellants

Versus

State of Haryana

... Respondent

Reserved on : 10.05.2019
Date of decision : 14.05.2019

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

Present: Mr.J.S.Mehndiratta, Advocate
for the appellant in CRA-D-1825-DB-2014.

Mr.Sandeep Singh Sangwan, Advocate
for the appellants in CRA-D-28-DB-2015.

Mrs.Shubhra Singh, Addl.A.G. 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 and 27.08.2014 and order dated 28.08.2014 rendered by the Additional Sessions

Judge, Bhiwani, in Sessions Trial No.358 of 2013 whereby the appellants were charged with and tried for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code (in short 'IPC'), have been convicted thereunder. They have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of two months for the offence punishable under Section 302 read with Section 34 IPC. They have also been sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one months for the offence punishable under Section 201 read with Section 34 IPC. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 03.10.2013 SI/SHO Mahenderpal along with police officials was present near Fuwara Chowk, Dadri, in a government vehicle being driven by Constable Sombir. He received a call on his mobile phone that a half naked dead body of an aged person was lying near Saraswati Vatika, Rohtak Road, Dadri by the side of watercourse. He reached at the spot. He found one piece of paper dated 30.09.2013 bearing mobile No.8607671486. The investigating officer made telephone call to one Rajesh. He disclosed the description of dead body to Rajesh on phone. Rajesh told that the dead body was of Shiv Charan Pandit of their village. Thereafter on receipt of information, Deepak son of deceased Shiv Charan along with other villagers reached at Civil Hospital, Dadri. Statement of complainant Deepak was recorded. According to the contents of his statement, on 02.10.2013 at about 7.00/7.30 P.M. his father went to see the tubewell and he was carrying a *danda* in his hand.

After 15/20 minutes, he also went there calling upon his father for taking dinner but he could not find him. He inquired about his father from the vicinity but he could not find any clue. On the next day at about 08.00 A.M. he received a telephonic call from Rajesh that the dead body of his father Shiv Charan was lying at Dadri Rawaldhi By-pass. He along with his uncle Kahniya Lal, Manoj and other persons went to the General Hospital, Dadri. He found marks of injuries on the neck, nose and both legs. The complainant raised suspicion that there had been some dispute going on with regard to partition of land with Ram Kishan. FIR was registered. Investigation was carried out. The challan was presented after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statements of accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

4. Learned counsel appearing for the appellants have 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 judgment dated 27.08.2014 and order dated 28.08.2014.

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

7. PW-6 Dr.Parveen Kumar had conducted post-mortem examination. The post-mortem report is Ex.PL. He led his evidence by filing affidavit. He had noticed following injuries on the person of Shiv Charan:-

- “1. Bruising with abrasion present at left paramedian to the trachea, oval irregularly 4 in nos. on dissection-ecchymosis was present.*
- 2. Bruising with abrasion present at right lateral to the neck inferiorly oval irregularly on ecchymosis present.*
- 3. Nasal bruising with abrasion present with bilateral nostril bleed on dissection septum fractured and ecchymosis was present.*
- 4. Multiple bruising with abrasion present irregularly on anterior chest wall and posteriorly on dissection-ecchymosis was present.*
- 5. Bruising present irregularly left shoulder anteriorly on dissection-ecchymosis was present.*
- 6. Bruising present irregularly on bilateral knees. On dissection-ecchymosis was present.*
- 7. Bruising present irregularly at right ankle. On dissection-ecchymosis was present.”*

In his opinion, the possibility of throttling of Shiv Charan could not be ruled out. Probable time elapsed between injury and death was variable and between death and post-mortem examination was within 24 hours.

8. PW-1 Kanhiya Lal is brother of deceased Shiv Charan. According to him, on 03.10.2013, Deepak son of Shiv Charan received a telephonic call from Rajesh that his father was lying dead near Saraswati Vatika at Dadri. They went to General Hospital, Dadri. They noticed many injuries on the body of deceased, i.e. neck, nose, hand and foot. His sister-

in-law told him that Sonu accompanied by Dharmender @ Mangal and Satish had called Shiv Charan. He was taken in his vehicle at about 9.30 P.M. Shiv Charan was having visiting terms with father of Sonu. He used to take liquor. The motive was of having suspicion that Shiv Charan was having evil eye upon his mother. In his cross-examination, he admitted that a civil case was pending between them and Ram Kishan. He was the same Ram Kishan who was named as suspect in his complaint. He met Rajbala at 3.30 P.M. in the presence of Deepak on the same day. When Deepak came to him at 8.30 A.M., Rajbala was present in her house. Accused were arrested on 06.10.2013.

9. PW-2 Rajbala is the material witness. The prosecution has relied upon the statement of PW-2 to prove the “last seen theory”. According to her, her husband Shiv Charan went to the fields to look after the tubewell. It was at a distance of 2 acres from the house. When her husband did not come back, she sent his son Deepak at 7.45 P.M. to call his father from the fields. When both did not come back, she went to search them at about 9.30 P.M. Her husband was coming from village side. Near the house of her brother-in-law, all the accused took her husband with them. She inquired from the accused. They told her that they would come back after some time. On the next day, Rajesh told his son Deepak that his uncle was lying near Vatika due to accident. Deepak, Kanhiya, Manoj and some villagers went to Dadri. She did not disclose the above facts to Deepak and others. Her husband used to go to the house of Sonu. Sonu was having a false suspicion on her husband. In her cross-examination, she deposed that she came to know about the death of her husband only when his dead body was brought in the village. She told the facts to Kanhiya. Deepak was not

present. She told Deepak the facts at 5.00 P.M. after the cremation. She made statement Ex.DA to the police before cremation at 4.15 P.M. She woke up at 6.00 A.M. and went to the fields along with Deepak and her daughter.

10. PW-3 Deepak is son of the deceased. According to him, on 02.10.2013 at about 7.15/7.30 P.M., his father had gone to look after the tubewell. His father did not come back. He searched for him. His father was not found. He came back to his house and slept. On the next day, he was present in the house of his uncle Kanhiya. A message was received on his mobile phone that Shiv Charan was lying dead near Saraswati Vatika. He along with Kanhiya, Manoj and 50-60 persons of the village went to General Hospital, Dadri. His statement Ex.PA was recorded. They went to the house at 2.00 P.M. Thereafter he along with villagers went to the house of the accused. His mother told this fact to his uncle that accused took his father in a vehicle in the previous night. In his cross-examination, he deposed that his father was not consuming liquor. He told the police in his statement Ex.PA that his grand father Bhola Ram due to good relation with Ram Kishan brought him from village Dadyan near Beri to their village. Ram Kishan started residing in their land. They claimed half of the land. A case was pending between the parties.

11. PW-9 Mahender Pal had deposed that he received telephonic message on his mobile to the effect that a half naked dead body of aged person was lying near Saraswati Vatika, Rohtak Road, Dadri. He contacted Rajesh. Deepak Sharma son of the deceased met him in the hospital. He recorded his statement Ex.PA. He prepared inquest report Ex.PN. Rough site plan Ex.PQ was prepared. He arrested the accused. Accused Sonu got

recovered one vehicle (Magic) and one *danda* from the fields behind school of village Mori. Rough sketch of *danda* Ex.PS was prepared. The disclosure statement of Sonu is Ex.PB. Accused Dharmender got recovered two *dandas*. Rough sketch of *danda* was prepared. Accused Satish also got recovered one torch.

12. The Chemical Examiner's report is Ex.PI. According to the contents of report, ethyl alcohol was detected. According to the statement made by PW-3 Deepak Sharma, his father was 47 years old. He left the house at 7.00/7.30 P.M. on 02.10.2013. He was armed with *danda*. After 15/20 minutes he searched his father. His father was not traceable. He inquired from his family about father. Nobody told him about his father. He thought that his father had gone to see some person in the village. On that day at about 8.00 A.M. Rajesh told him that dead body of Shiv Charan was found at Dadri Rawaldhi By-pass. He went to the hospital along with his uncle Kanhiya Lal and Manoj Kumar. His grand father Bhola Ram had settled Ram Kishan in his village. Some dispute was going on with Ram Kishan. In statement Ex.PA, names of the appellants were not mentioned. Similarly PW-2 Rajbala had made her statement Ex.DA. According to the contents of Ex.DA, her husband went to tubewell at 7.30 P.M. It was at a distance of 2 killas. She sent her son Deepak to call his father. When her husband and son did not come back, she went to see them. In the meantime Sonu along with Satish, Dharmender @ Mangal sitting in a vehicle came from field side. Sonu asked grandfather to take Shiv Charan with him to the village. Her husband was sitting in the vehicle. He told her that he would come back. On the next morning, she came to know that all the three persons committed murder of her husband by inflicting injuries. Sonu

suspected her husband. He had committed murder of her husband after hatching conspiracy with Satish and Dharmender @ Mangal. She did not disclose these facts to her family because it could disturb them.

13. The conduct of PW-2 Rajbala and PW-3 Deepak is unusual and strange. According to PW-3 Deepak, he had gone in search of his father but he could not trace him. He came back and slept. In his statement Ex.PA, he deposed that he had made inquiries from the family members about his father. Nobody told him anything. In statement Ex.DA, PW-2 Rajbala stated that she had last seen her husband in the company of accused at 9.30 P.M. If that was so, she would have told this fact to other family members. Her first reaction was to apprise the family members of seeing her husband in the company of accused. The explanation given by her that she did not want any disturbance to the family members, cannot be accepted. She was bound to share the information. In case she had seen her husband in the company of accused, she would have shared this information with the family members definitely. Her statement was recorded at 4.50 PM. PW-1 Kanhiya Lal had met PW-2 Rajbala at 3.30 P.M. in the presence of Deepak. The motive as per statement Ex.PA was that land dispute was going on with Ram Kishan. The name of the appellants were not mentioned in the FIR. The motive attributed to the appellants at the later stage that Sonu suspected that deceased was keeping bad eye on his mother. However, no evidence was led to this effect except the assertion of PW-2 Rajbala. Recoveries have been made from open space. It was accessible to all. No independent witness was joined at the time of making recoveries though available. It has come in the FSL report that deceased had consumed liquor. The case is based on circumstantial evidence. In order to prove the case based on

circumstantial evidence, chain must be complete. All the circumstances must point out towards the guilt of the accused. In the present case, chain is incomplete.

14. Accordingly both the appeals are allowed. The judgment dated 27.08.2014 and order dated 28.08.2014 are set aside. Appellants are acquitted. Appellant Sonu is in custody. He be released forthwith. Appellants Satish and Dharmender @ Mangal are on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 14, 2019.
Davinder Kumar

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