

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-840-DB-2018
Reserved on : 26.02.2019
Date of decision : 28.02.2019

Mahender

... Appellant

Versus

State of Haryana

... Respondent

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

Present: Mr.Lakhwinder Singh Mann, Advocate
for the appellant.

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

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 17.07.2018 and 20.07.2018 rendered by the learned Sessions Judge, Sirsa, in Sessions Case No.95 of 2013 whereby the appellant along with co-accused Om Parkash were charged with and tried for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code (in short 'IPC'). Co-accused Om Parkash was acquitted, however, appellant Mahender was convicted and sentenced as under:-

Under Section	Sentence	Fine	In default of sentence
302 IPC	Life imprisonment	Rs.50000/-	In default of payment of fine, to further undergo RI for a period of six months.
201 IPC	RI for two years	Rs.1000/-	In default of payment of fine, to further undergo RI for a period of one month.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that Ram Sarup son

of Ishar Ram, resident of Keharwala, got recorded his statement Ex.PA on 16.06.2013 to the police to the effect that he was a farmer. His parents had been living with his younger brother Jagdish. On 16.06.2013, his father Ishar Ram son of Mula Ram, aged about 70 years went to fields at about 08.00 A.M. on bicycle. Jagdish had gone to the fields at about 09.00/10.00 A.M. with meals for his father. He also reached there at about 11.30 A.M. on tractor. His father was not present in the fields. His shoes (*juti*) and bicycle were found lying near the fields of Hazari Godara adjacent to passage. His nephew Dashrath son of Jagdish, aged about 12 years brought cycle and shoes. He and his brother searched for his father in the fields. They followed foot steps up to a distance of one more acre from the place where bicycle and shoes (*juti*) of their father were lying. Om Parkash son of Dula Ram resident of Keharwala, neighbourer of their fields was working in cotton crop. His brother Krishan was sleeping under a tree and another brother Mahender was sowing Gawara. He suspected that Mahender, Krishan, Om Parkash sons of Dula Ram, Heera Lal son of Mahender and Hanuman son of Krishan, residents of village Keharwala had killed his father and buried his dead body in the fields. FIR was registered. Post-mortem was conducted in PGI, Rohtak. Mahender was arrested on 20.06.2013. He made disclosure statement. Sealed parcels were sent to FSL, Madhuban for chemical analysis. Investigation was completed. The challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellant was convicted and sentenced, as noticed hereinabove. Hence the appeal.

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

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-13 Dr.Pankaj Chhikara deposed that he along with Dr. Yogesh Kumar conducted post-mortem examination on the body of Ishar Ram. He had led his evidence by filing his affidavit Ex.PQ. He proved PMR Ex.PR. The cause of death was head injuries. The injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. Injury No.1 was caused by heavy sharp weapon and injuries No.2 & 3 were caused by heavy blunt object.

8. PW-1 Luna Ram testified that Ishar Ram was his father-in-law. On 16.06.2013 he had come to the house of his father-in-law in relation with some work. He received a telephonic information from his brother-in-law Ram Sarup that Mahender and Om Parkash along with Krishan son of Dula Ram, Heera Lal son of Mahender and Hanuman son of Krishan had committed murder of his father-in-law Ishar Ram. They buried his dead body in the fields of Mahender. Thereafter, he went the fields. Police was also present at the spot. BDPO Ram Singh also reached on the spot. On his directions, Ram Sarup and Jagdish removed the earth and took out the body of Ishar Ram. There were injuries on the head of body and foot. The police conducted inquest proceedings. On 19.06.2013 he was present at his house at Dhani. Bachan Singh along with Subhash son of Amar Singh, resident of

Johrawali, accused Mahender, Krishan, Om Parkash, Hanuman and Heera Lal came to his house. Mahender along with other accused with folded hands told him that they had committed murder of Ishar Ram and buried the dead body in the fields. They further told that the motive for committing murder was that there was a theft in the house of accused party and deceased along with his family was suspected to be culprits of that theft. They further told that they had committed a blunder and requested him to get the matter compromised. In his cross-examination he deposed that his statement was recorded by the police only once on 19.06.2013. He admitted that he did not mention the name of accused Om Parkash, Heera Lal, Hanuman and Krishan in his statement Ex.DA. He owned 22 acres of land. When dead body was taken out from the pit, almost 70 persons were present on the spot. The field of Ishar Ram was surrounded by the fields of accused Mahender, Krishan and family of Godaras whose name he did not know.

9. PW-7 Jallu Ram testified that he visited the spot at the request of police. He went to the fields of Mahender. He prepared scaled site plan Ex.PH. The place of occurrence was in square No.80 killa No.22 and the same was owned by Mahender.

10. PW-9 Ram Sarup deposed that on 16.06.2013 his father Ishar Ram left for the fields at about 08.00 A.M. on bicycle. His brother Jagdish also left for the fields at about 09.00 / 10.00 A.M. on a camel cart. He had left for the fields at about 11.00/11.30 A.M. on a tractor. His son Dashrath had also gone to the fields. His father was not seen in the fields. His son Dashrath had seen Krishan and Heera Lal carrying something followed by Hanuman, Om Parkash and Mahender carrying *lathis* and *kassi*. Jagdish had seen from a distance that all the five persons were digging a pit and they

were roaming in the fields. The bicycle and shoes of his father were lying by the side of fields. A doctor and BDPO also came on the spot. The body was taken out from the pit. Inquest proceedings were conducted by the police. One moon shape weapon (*krundia*) and blood stained earth were taken into possession. The post-mortem was conducted. A theft had taken place in the house of accused Mahender. He suspected his family's involvement for the theft. The matter was settled in the Panchayat. On 19.06.2013 Subhash had gone to the *dhani* of Luna Ram at Ellenabad. All the five persons went there. They confessed commission of offence. No Sarpanch, Member Panchayat or Lambardar were present at the time when they saw the dead body of his father for the first time. He did not know whether any report was lodged by Mahender regarding theft in his house.

11. PW-10 Jagdish has deposed that his father had gone to the fields on 16.06.2013 at about 08.00 A.M. on bicycle. He had gone to the fields at about 09.00/10.00 A.M. He had taken meals for his father. His brother Ram Sarup had come to the fields at about 10.00/ 11.00 A.M. on tractor. His father was not seen in the fields. Dashrath son of Ram Sarup also came to the spot. He saw Heera Lal and Krishan having lifted something. Mahender, Om Parkash and Hanuman were also carrying *lathis* and *kassi*. They were digging a pit. They were burying something. Other three accused were also there. They noticed the shoes (*juti*) and bicycle of his father lying by the side of fields. They followed foot prints of his father where the cycle was lying near the fields which led them to the fields of Mahender. They noticed the dead body of his father buried under the earth. Ram Sarup went to the police. Police had summoned Ram Singh BDPO and one doctor. The dead body was taken out from the pit. Inquest proceedings

were prepared. Mahender accused had made extra judicial confession before Subhash and Luna Ram that he had committed murder of his father in connivance with Krishan, Heera, Hanuman and Om Parkash. This fact was told to them by Luna Ram and Subhash. In his cross-examination he deposed that his statement was recorded once only.

12. PW-14 ASI Mahender Singh deposed that on 20.06.2013 Luna Ram met them and got recorded his extra judicial confession Ex.PS in which PW Luna Ram disclosed that Mahender son of Dula Ram, resident of Keharwala had reached his *Dhani* on 19.06.2013. He told Luna Ram that he had committed a mistake. He had committed murder of Ishar Ram and buried the dead body in a pit. His statement was recorded by Inspector. On 21.06.2013 accused Mahender was taken out from the lock up. He made disclosure statement Ex.PT. He disclosed that *kasia* used in the commission of crime had been kept concealed by him in a room meant for fodder. He could get the same recovered. They went to the house of Mahender. He got recovered *kasia*. Rough sketch was prepared. He made another disclosure statement Ex.PX that he had kept *lathi* used in the commission of crime and *kassi* used for removing the earth, concealed in his fields. He got the same recovered. These were taken into possession. In his cross-examination he admitted that *kassi* was available in the houses of farmers in the villages. There were blood stains on *lathi*.

13. PW-15 Jagdish Chand Inspector deposed that he was present on the Bus Stand, Keharwala, on 16.06.2013. Ram Sarup complainant came to him. He got recorded his statement Ex.PA. FIR was registered. He visited the spot. He got photographed the place of occurrence through Constable Jagat Pal. At the instance of BDPO Ram Singh, the earth was removed. The

dead body was taken out. There was injury on the head of the deceased. He lifted blood stained earth, one blood stained curved *krundia* of iron having wooden *binda*. These were taken into possession. Recovery memo was prepared. He prepared rough site plan Ex.PAF. On 20.06.2013 he along with ASI Mahender Singh and HC Gurmeet Singh were present on the spot. Luna Ram met them. He got recorded his statement Ex.PS. Mahender made extra judicial confession that he had committed big mistake. He had committed the murder of Ishar Ram. On 21.06.2013 disclosure statement of the accused was recorded on the basis of which recoveries were made including *kasia* Ex.P9. *Lathi* is Ex.P10 and *kassi* is Ex.P11. In his cross-examination he admitted that he did not collect any *jamabandi* or *girdawari* showing the place of recovery belonging to accused Mahender. Volunteered, scaled site plan was prepared by Patwari.

14. PW-16 Ram Singh deposed that he was posted as BDPO at Ellenabad. He went to the place along with police officials. On his direction, earth was removed. The dead body was taken out. The dead body was having head injuries. Recovery memo Ex.PL was prepared. He signed the same. Blood stained earth and one blood stained *kurandia* were also taken in possession by the police.

15. The FSL report is Ex.PJ. The blood was detected in exhibit-2 (blood stained earth). Exhibit-3 (wooden piece / *kurdia*) was stained with blood stains. Blood was detected on exhibit-4 (*danda*) and on exhibit-5 (*kurdia* / *kassia*). The cause of death was head injuries. The injuries were ante mortem in nature. Injury No.1 was caused by heavy sharp weapon and injuries No.2 & 3 were caused by heavy blunt object/surface. The post-mortem report is duly proved by PW-13 Dr.Pankaj Chhikara who conducted

the post-mortem examination.

16. PW-9 Ram Sarup has categorically deposed that on 16.06.2013 his father had gone to the field. He also reached the spot at 11.00/11.30 A.M. His son Dashrath was also there. PW-10 Jagdish had seen from distance that five persons were digging a pit. They followed the foot prints and arrived at the pit. He informed the police. The body was taken out from the pit in the presence of BDPO and doctor. PW-10 Jagdish deposed that he went to the field at 09.00/10.00 A.M. His father was missing. He saw Hira Lal and Krishan carrying something. Mahender, Om Parkash and Hanuman were armed with *lathis* and *kassi*. He saw that Hanuman and Om Parkash were digging a pit. They were burying something. They followed the foot prints of their father and reached the fields of Mahender. They noticed the body of their father buried under the soil. Ram Sarup informed the police. The dead body was taken out from the pit.

17. The dead body had been recovered from the field of Mahender. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove that the field from where the dead body was recovered belonged to Mahender. The fact of the matter is that dead body was found in the pit of the field of Mahender. PW-7 Jallu Ram Patwari has categorically deposed that the place of occurrence was in square No.80, Killa No.22. It was owned by Mahender. No evidence contrary to it has been led by the appellant. It is for the appellant to prove that under what circumstances the dead body was found in his field. Non-examination of Dashrath is not fatal to the case of the prosecution. He was 12 years of age at that time. Even according to site plan Ex.PH, the dead body was recovered from Square No.80 Killa No.22.

18. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

February 28, 2019.
Davinder Kumar

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