

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

Reserved on : 15.2.2019

Date of decision : 26.2.2019

1. CRA-D No. 868-DB of 2018 (O&M)

Nirmala Devi Appellant
versus
State of Haryana ... Respondent

2. CRA-D No. 898-DB of 2018 (O&M)

Joginder Appellant
versus
State of Haryana ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Kuldip Singh**

Present Mr. A. P. Kaushal, Advocate, for the appellant
in CRA-D No. 868-DB of 2018 and
Mr. Yash Pal Malik, Legal Aid Counsel for the appellant
in CRA-D No. 898-DB of 2018.
Ms. Shubhra Singh, Additional Advocate General, Haryana.
Mr. Vishva Bahl, Advocate, for the complainant.

Rajiv Sharma, J.

1. Since common questions of law and facts are involved in these appeals bearing CRA-D No. 868-DB of 2018 – Nirmala Devi vs State of Haryana and CRA-D No. 898-DB of 2018 – Joginder vs State of Haryana, therefore, the same are being disposed of by a common judgment.
2. The aforesaid appeals are instituted against the judgment dated 21.8.2018 and order dated 28.8.2018, rendered by learned Additional

Sessions Judge, Sonapat, in SC/ CIS No. 250 of 2017 dated 20.7.2017, by appellants Nirmala Devi and Joginder, who were charged with and tried for the offence punishable under Sections 364, 302, 201, 120-B of the Indian Penal Code. The appellants were convicted and sentenced under Section 120-B of the Indian Penal Code to undergo imprisonment for life and to pay a fine of ₹ 50,000/- each and in default of payment of fine, to undergo further simple imprisonment for a period of three months. Appellant Joginder was further sentenced to imprisonment for life and pay fine of ₹ 1,00,000/- for the commission of offence punishable under Section 302 read with Section 120-B of the Indian Penal Code and in default of payment of fine, to undergo further simple imprisonment for a period of six months. He was further sentenced to imprisonment for ten years and pay fine of ₹ 25,000/- for the commission of offence punishable under Section 364 of the Indian Penal Code and in default of payment of fine, to undergo further simple imprisonment for a period of forty five days. He was further sentenced to imprisonment for seven years and pay fine of ₹ 10,000/- for the commission of offence punishable under Section 201 of the Indian Penal Code and in default of payment of fine, to undergo further simple imprisonment for a period of twenty days. All the sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 4.2.2017 Smt. Anguri Devi moved an application to the police alleging therein that on 1.2.2017 at about 5.00 P.M., her son Kehar Singh went along with Joginder resident of Gamri in his vehicle. On that night, Joginder was murdered in the fields and whereabouts of her son were also not traceable.

On the basis of this information, a case under Section 365 of the Indian Penal Code was registered. Investigation was carried out. On 2.2.2017, a burnt dead-body was recovered from the fields of Joginder. Mobile phone and shoes were also recovered from the spot. The dead-body was identified to be of Joginder. FIR No. 25 dated 2.2.2017 under Sections 302, 201, 34 of the Indian Penal Code was registered against unknown persons. The site was inspected. Post-mortem was conducted. On 7.2.2017, Smt. Anguri Devi moved another application at Police Post, Court Complex, alleging that Joginder was alive and had absconded. According to her, the dead-body might be of her son. Blood samples of family members of Joginder as well as of Kehar Singh were taken for DNA testing. The case property was sent to Forensic Science Laboratory, Madhuban. On 1.4.2017, accused Joginder surrendered in case FIR No. 25. However, no case was made out to arrest him in case FIR No. 25. On interrogation, he revealed that on 1.2.2017, he offered liquor to Kehar Singh. Thereafter, he committed his murder after strangulating. On 3.4.2017, he was arrested in the present case. He made disclosure statement, Ex.PW6/A, to the effect that he had visiting terms with Nirmala wife of Rajpal. She was into witch craft. About 7-8 months ago, she lost her son Kamal. She told that her son had died unnatural death and for the peace of his soul, she wanted to sacrifice a person, whose name starts with word 'K'. Accordingly, they hatched conspiracy. Accused Joginder took Kehar Singh from his house. He offered him drinks. Thereafter, he strangulated him. He took out his aadhar card and voter card from his pocket. He set him ablaze so that dead-body could not be identified. He got recovered car, aadhar card and voter card of Kehar Singh. Thereafter, a case under Sections 302, 201, 120-B IPC read with Section 34 IPC was

registered. On 5.4.2017, Nirmala Devi was arrested. Investigation was carried out and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated in the case. They were convicted and sentenced, as noticed above. Hence, the aforesaid appeals.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State and for the complainant vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

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

7. PW5 Dr. Anil Garg has conducted the post-mortem examination on 3.2.2017. The name of the deceased was given as Joginder at the time of post-mortem examination. He proved post-mortem report, Ex.PW5/A. According to his opinion, the cause of death was ante-mortem strangulation, which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. The burns were post-mortem in nature.

8. PW1 Kashmere Lal deposed that on 1.2.2017 at about 5.30 P.M., accused Joginder came to his house. He took away his brother Kehar Singh in his car. On the next day, he came to know that Joginder Singh was murdered. His dead-body was burnt in the fields of village Gamri. A car,

shoes and mobile phone of Joginder were found by his family members. Family members of Joginder Singh presumed that he had died. Post-mortem of the body was conducted as that of Joginder. They searched for Kehar Singh for two days. They moved another complaint stating that the burnt body was not of Joginder but it was of Kehar Singh. Police got conducted the DNA test of his mother and him. Thereafter, it came to the light that the burnt body was of Kehar Singh and not of Joginder. He identified accused Joginder in the Court. He admitted that he did not see accused Joginder taking away his brother Kehar Singh as at that time he was in Gohana Market for earning his livelihood.

9. PW2 Smt. Anguri Devi deposed that on 1.2.2017 at about 5.30 P.M., Joginder came to her house and took away her son Kehar Singh on the pretext that he was going to vegetable market. She waited for him for the whole night. In the morning, she came to know that Joginder had been murdered in his field in village Gamri by someone. His belongings i.e. car, shoes and mobile phone were found near the burnt dead-body. She made a complaint to the police regarding missing of his son. She doubted that Joginder had murdered his son in collusion with some other persons. Her eye sight was weak, therefore, she could not identify accused Joginder. She denied the suggestion that dead-body was not of Kehar Singh, which was lying in the fields of village Gamri.

10. PW6 HC Sanjay deposed that accused Joginder and Nirmala Devi were interrogated by the Investigating Officer. They made disclosure statements, PW6/A and Ex.PW6/B. Thereafter, accused Joginder got recovered Aadhar card, Maruti Car and RC of the car from his house. These items were taken into possession. He signed all the memos. In his cross-

examination, he categorically admitted that nothing was recovered at the instance of accused Nirmala. He also admitted that no public witness was joined at the time of recording of statement of accused Joginder.

11. PW7 Lady Constable Ms. Pooja deposed that accused Nirmala Devi was arrested by the Investigating Officer in her presence. She was interrogated. She made disclosure statement, Ex.PW6/B. In her cross-examination, she admitted that no public witness was joined by the Investigating officer at the time of recording of disclosure statement.

12. PW8 Anil Kumar deposed that he reached the spot and found that a burnt dead-body was lying in the fields of Joginder. The dead-body was of Joginder. He identified the dead-body. He was uncle of Joginder deceased.

13. PW9 HC Vinod Kumar deposed that on 2.2.2017, from the place of occurrence, the Investigating Officer lifted the ash and shoes Gold Star and one mobile phone.

14. PW10 Shamsher is father of appellant Joginder. He deposed that on 2.2.2017, the Investigating Officer had lifted the mobile phone, a pair of shoes and ash from the place of occurrence and taken into possession vide memo, Ex.PW9/A. He identified the dead-body of Joginder but after some time it came to their knowledge that it was the dead-body of some other person. On 25.1.2017, due to family dispute, his son Joginder left the house. By mistake, he identified the dead-body to be of Joginder.

15. PW14 SI Jaljeet Singh deposed that on 2.2.2017, he reached the spot and lifted one pair shoes, mobile phone and ash vide memo Ex.PW9/1. He also got the post-mortem conducted.

16. PW15 Parveen deposed that on 2.2.2017 he went to the fields of village Gamri. A dead-body was lying there. He identified the dead-body to be of Joginder, who was his younger brother. He was declared hostile. He was cross-examined by the learned Public Prosecutor. He denied the statement, Ex.PW15/A.

17. PW16 ASI Krishan Kumar deposed that on 4.2.2017 PW2 Anguri Devi moved the application, Ex.PW2/A, before him.

18. PW18 ASI Rajbir deposed that accused Joginder made a disclosure statement vide Ex.PW6/A, on the basis of which recoveries were made. Site plan was also prepared. Accused Nirmala Devi was arrested on 5.4.2017. She made disclosure statement, Ex.PW6/B. In his cross-examination, he admitted that no recoveries were effected from accused Nirmala. He also admitted that in the entire investigation, except disclosure statement of accused Nirmala, no other evidence was found against her.

19. The case of the prosecution precisely is that appellant Joginder had taken away Kehar Singh (deceased) from his house on 1.2.2017 on the pretext of going to vegetable market. His mother got the missing report registered with the police. One dead-body was found in the fields of Joginder. The impression was given that Joginder was murdered and post-mortem was conducted of his body. On 7.2.2017, PW2 Smt. Anguri Devi lodged complaint alleging that Joginder was alive and in fact, it was the dead-body of her son Kehar Singh. The DNA was also got conducted. As per post-mortem report, the cause of death was ante-mortem strangulation, which was sufficient to cause death in ordinary course of nature. The injuries were ante-mortem in nature and the burns were post-mortem in nature.

20. The appellants were arrested. They suffered disclosure statements, Ex.PW6/A and Ex. PW6/B. Recoveries were effected on the basis of disclosure statement of accused Joginder i.e. aadhar card and voter card of Kehar Singh. No recovery was effected from accused Nirmala.

21. PW1 Kashmere Lal deposed that on 1.2.2017 at about 5.30 P.M., accused Joginder took away his brother Kehar Singh in his car. Mother of the deceased, PW2 Smt. Anguri Devi has categorically testified that on 1.2.2017 at about 5.30 P.M., accused Joginder came to their house and took away her son Kehar Singh on the pretext of going to vegetable market. On the next day, they came to know about the murder of Joginder by someone. In her cross-examination, she admitted that as her eye sight was weak so she could not identify accused Joginder. The dead-body was found in the fields of accused Joginder. PW8 Anil admitted that a burnt dead-body was lying in the fields of Joginder. He is uncle of accused Joginder. Similarly, PW10 Shamsher, who is father of appellant Joginder, admitted that he identified the dead-body of Joginder but after some time it came to his knowledge that it was the dead-body of some other person. PW15 Parveen has also stated that on 2.2.2017 he went to the fields of village Gamri. A dead-body was lying there. He identified the dead-body to be of Joginder.

22. According to the prosecution, the appellants had hatched a conspiracy to kill Kehar Singh. It was alleged that accused Nirmala had lost her son Kamal about 7-8 months ago. She wanted to sacrifice a person, whose name starts with word 'K', to pacify the soul of her departed son. This theory is not believable. Why Nirmala Devi would conspire to kill a person after 7-8 months of her son's death. No recoveries were effected from

accused Nirmala Devi as per the testimony of PW6 Sanjay.

23. The fact of the matter is that it was appellant Joginder, who had taken away Kehar Singh from his house. He took him to his fields. He offered him drinks. He strangled him. He burnt his body to give an impression that he (Joginder) was murdered. However, later on during investigation, it transpired that it was the dead-body of Kehar Singh as per DNA test report.

24. Their Lordships of Hon'ble 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. Para 8 thereof is extracted below:-

“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 case 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.”

25. The prosecution has failed to prove the conspiracy between Nirmala and Joginder. There was no meeting of mind between Joginder and Nirmala.

26. FSL report is Ex.PX. According to FSL report, the autosomal STR analysis conclusively proves that DNA profile of source of item no. IA

(Teeth) is biologically related with the DNA profile of Anguri Devi (source of Item No.4). No common poison was detected in exhibits 1a and 1c. No petrol, diesel, kerosene or their residues were detected in exhibits 1b and 2. Accused Joginder got recovered car, aadhar card and voter card of Kehar Singh on the basis of his disclosure statement.

27. The case is based on circumstantial evidence. In the present case chain is complete as far as appellant Joginder is concerned. There is no evidence against appellant Nirmala Devi, except disclosure statement Ex. PW6/B. PW18 ASI Rajbir in his cross-examination admitted that no recoveries were effected from accused Nirmala. Except disclosure statement of accused Joginder, no incriminating material was found against accused Nirmala.

28. Though father of appellant Joginder, PW10 Shamsheer has taken the plea that on 25.1.2017, his son had left the house due to family dispute, however, no evidence, except his bald assertion, was produced. Since the body was recovered from the fields of accused Joginder, it was for him to explain the circumstance in which it was lying in his field.

29. Appellant Joginder had kidnapped Kehar Singh in order to kill him. The statements of the prosecution witnesses are duly corroborated by medical evidence as well as FSL report. He has also tried to destroy the evidence by burning the body of Kehar Singh.

30. The prosecution has failed to prove the case against appellant Nirmala Devi beyond reasonable doubt. Accordingly, CRA-D No. 868-DB of 2018 – Nirmala Devi vs State of Haryana, is allowed. She is acquitted of the charges framed against her. She be released forthwith.

31. The prosecution has failed to prove the case against appellant Joginder under Section 120-B IPC. His appeal bearing CRA-D No. 898-DB of 2018 – Joginder vs State of Haryana, is partly allowed. His conviction under Section 302 read with Section 120-B IPC is altered to Section 302 IPC. The prosecution has also proved case against him under Section 364 read with Section 201 IPC.

(Rajiv Sharma)
Judge

26.2.2019
vs

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No