

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-714-DB-2017
Reserved on : 11.09.2019
Date of decision : 17.09.2019

Joginder and another

... Appellants

Versus

State of Haryana and another

... Respondents

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

Present: Mr.Kamal Sharma, Advocate
for the appellants.

Mr.Vivek Saini, DAG, Haryana.

Mr.Bhisham Kumar, Advocate
for respondent no.2.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 07.07.2017 rendered by the Additional Sessions Judge, Palwal, in Sessions case no.74 of 2014 whereby the appellants were charged with and tried for offences punishable under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code (in short 'IPC'). The appellants were convicted and sentenced as under:-

Under Section 302/34 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of one year.
Under Section 201/34 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of six months.
Under Section 120B/34 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

All the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that accused Joginder and Parveen took Rohtash along with them to village Mohna on the motor cycle owned by one Gopal. All the accused murdered Rohtash. In order to conceal the evidence, they lodged FIR no.166 dated 17.04.2009, under Sections 279, 337, 304-A IPC at Police Station Camp Palwal against some unknown persons. Post-mortem was conducted on 17.04.2009. No action was taken against the accused. The accused used to borrow money from the complainant. Rohtash was the only son of the complainant. When the loan amount was demanded by the complainant, they have eliminated his son.

3. Prosecution examined a number of witnesses. The statements of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants have also examined ten witnesses in their defence. The appellants were convicted and sentenced as noticed hereinabove. Hence this appeal.

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 as well respondent no.2 (complainant) has supported the judgment and order of the learned trial Court.

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

7. PW-2 Hem Lata deposed that on 16.04.2009, accused

Khacheru, Joginder, Parveen, Gurdial and wife of Gurdial took her brother to village Mohna. When her father came back and asked for her brother Rohtash, her elder sister told her father to go out to search for him. Thereafter, her sister visited the house of Khacheru. Some relatives had disclosed to her sister that an accident had taken place. They visited railway crossing of village Mohana, some persons had rushed her brother to Guru Nanak Hospital, Palwal. Her brother was dead. There was no injury mark on the dead body of her brother except there was a hole injury on the neck of her brother. Blood was oozing from both the ears. It was not a case of accident but her brother was murdered by Parveen, Joginder, Khacheru, Lillavati, Gurdial and Badi. The matter was reported to the police. Police did not take any action. In her cross-examination, she categorically admitted that case of accident was registered in her absence. She was present at her house. Her brother was called by accused Parveen and Joginder on 16.04.2009 at around 7.30 P.M. Mohna was situated at a distance of 20/22 kilometers from their village. Joginder and Parveen came back to their house at about 9.30 P.M. They did not disclose regarding any accident. Jai Singh informed them about the death of her brother. They did not move any application to the police. They came to know that the accused had committed murder of her brother on that very day. There was no enmity between them prior to the occurrence. However they were not on talking terms with the family of Khacheru. Her father reached after the completion of the post-mortem in the hospital. They did not move any application before the police at the time of post-mortem examination of body of her brother. Her father did not receive amount of Rs.1 lac under Rajiv Gandhi

Yojna.

8. PW-4 Nathimal deposed that accused had killed his son on the speed breaker of Nyagaon on 16.04.2009. They came to know about the death of Rohtash at about 9.00 P.M. They went to Guru Nanak Hospital, Palwal. The dead body was lying on the stretcher. They took dead body to their home. He moved complaint Ex.PW4/A before SDJM, Palwal. He also moved an application Ex.PW4/B to SHO, Police Station City Palwal. In his cross-examination, he deposed that Parveen alone took his son to Mohna village. This fact was told to him by his nephew Jai Singh. When they came back, Rohtash was along with Parveen and Joginder. At about 9.30 P.M. on 17.04.2009, he came to know that his son Rohtash was admitted in Guru Nanak Hospital, Palwal. They rushed to Guru Nanak Hospital. They had not lodged complaint with the police immediately. They had taken the dead body to Government Hospital, Palwal. The post-mortem was conducted at about 2.30 P.M. He had applied under Rajiv Gandhi Insurance Scheme at the instance of accused party. However, he had not received anything.

9. PW-6 Santosh (wrongly numbered as PW-5) deposed that Rohtash was her son. Accused Parveen and Joginder had come to her house. They took him to village Mohna. Jai Singh told her that her son Rohtash was killed by Leelawati, Khacheru, Joginder, Parveen, Badi and Gurdial. They reported the matter to police. Police did not take any action. In her cross-examination, she deposed that they informed the police after 15 days of the occurrence. She admitted in her cross-examination that Khacheru was her brother-in-law and Parveen was the son of Khacheru.

10. PW-7 Bharat Kishor (wrongly numbered as PW-6) deposed that

he was sitting in the house of Nathimal on 16.04.2009. Parveen and Joginder took her brother-in-law Rohtash on motor cycle to village Mohna. They received information that body of Rohtash was lying in Guru Nanak Hospital, Palwal. In his cross-examination, he admitted that there was no previous enmity between Nathimal and Khacheru. He admitted that Jai Singh was alive and was residing at Palwal. He did not remember the date on which he came to know about the murder of Rohtash.

11. PW-5 Dr.Nisha Gurawa conducted the post-mortem examination. She proved the post mortem report Ex.PW5/B. She tendered into evidence her affidavit Ex.PW5/A. She noticed the following injuries on the person of deceased:-

- “1. A lacerated wound measuring 1.5 inch present over chin, on dissection extravassation of blood present over soft tissues.*
- 2. Multiple bruises varing size present over right side of face.*
- 3. Multiple abrasion of varing size present over B/L hand and B/L knees.*
- 4. Diffuse swelling present over left side temporo-parietal area on dissection blood clot present, extravassation of blood present in deep tissues on dissection of skull fracture of left side temporo-parietal bone present. SDH, EDH present.”*

In her opinion, the cause of death in this case was shock and haemorrhage due to ante mortem injuries to vital organs sufficient to cause death in ordinary course of nature. In her cross-examination, she deposed that as per information furnished by the police, the death was accidental. Post-mortem was conducted within 24 hours from the death. There was fracture on left

side temporoparietal bone. There was no injury with sharp edge weapon. The dead body was identified by Nathimal as well as Khacheru. The post-mortem was conducted in their presence. Police submitted papers in their presence.

12. DW-1 Ram Lal Sharma had produced the summoned record of LIC policy pertaining to deceased Rohtash. It was commenced from 28.04.2005. The policy was to mature on April, 2040. The last installment of premium was paid on 17.10.2008. He proved insurance policy Ex.D1. Ex.D8 application was moved for withdrawal of the insurance amount. The FIR was Ex.D9. The cause of death was written as road side accident. The claim application is Ex.D7 which was prepared at the instance of Nathimal.

13. DW-2 Karan Singh deposed that the dead body was lying in front of his house. One boy was standing near the dead body. Some persons had gathered there. The dead body was loaded in the tempo. The deceased died due to tractor accident.

14. DW-4 Suresh Kumar deposed that Nathimal complainant approached him to get the amount under Rajiv Gandhi Accident Yojna. Nathimal told him that his son Rohtash expired in road side accident. The form of Rajiv Gandhi Accident Yojna was filled by Nathimal. He identified the same. Photocopy of forwarding letter by Sub Divisional Magistrate, Palwal of Rajiv Gandhi Accident Yojna was Mark A1. Police came to him along with Nathimal regarding the road side accident of Rohtash. He had given affidavit regarding the road side accident of Rohtash vide Mark A2.

15. DW-6 SI Abbas Khan deposed that FIR no.166 dated 17.04.2009 was registered under Sections 279, 304-A IPC. The case was investigated by ASI Ram Kishan. Untraced report was prepared by

Inspector/SHO Narender Kadyan.

16. DW-9 Udayveer deposed that the matter was recommended to Reliance Company Panipat and District Social Welfare Office, Faridabad vide Mark Z.

17. DW-10 DSP Rajbir Singh deposed that he received application of Khacheru on 08.04.2011. He inquired the matter vide FIR no.166/09 under Section 279, 304-A IPC. He found that deceased Rohtash died due to accident.

18. The incident had taken place on 16.04.2009. FIR Ex.PW1/A was lodged on 17.04.2009 by appellant Joginder Singh son of Duli Chand. The cause of death was accident which took place at village Nayagaon due to negligence of tractor trolley. In the post-mortem report, it is specifically mentioned that injuries were received in road side accident. PW-5 Dr.Nisha Gurawa, in her cross-examination, deposed that as per information furnished by the police, the death was accidental. According to her, injuries were simple in nature and not by sharp edged weapon. The time between death and post-mortem was within 24 hours. PW-4 Nathimal was present at the time of post-mortem examination. He had submitted papers to claim insurance amount after the death of his son in accident as per statement of DW-1 Ram Lal Sharma. DW-1 Ram Lal Sharma had brought all the documents concerning process of application to release of insurance amount. Nathimal, as per statement of DW-4 Suresh Kumar, had also submitted application to grant amount under Rajiv Gandhi Accident Yojna. The SDM marked the same. According to DW-9 Udayveer, the matter was processed and recommended to Reliance Company and District Social Welfare Office, Faridabad vide Mark Z.

19. The case of the prosecution is based on circumstantial evidence. In order to prove a case based on circumstantial evidence, the chain must be complete. All the circumstances must categorically point towards the guilt of the accused. The motive attributed as per the complaint was that the appellant family had taken the loan from the complainant. However, there was no evidence with regard to this. Even the loan amount has not been mentioned. It cannot be believed that since the complainant party was demanding the repayment of loan amount, accused have killed his son Rohtash. The complainant has remained silent with effect from 16.04.2009. The complaint was filed in the year 2013 on which the matter was committed. The committal order was passed on 09.09.2014. One Gopal to whom the motor cycle belonged and Jai Singh who told that Rohtash was murdered were not examined. Though it has come on record that Jai Singh was alive and living at Palwal. According to PW-2 Hem Lata, family members were not present at the time of post-mortem examination. PW-6 Santosh categorically deposed that Nathimal was present at the time of post-mortem examination. The prosecution also tried to place reliance on theory of "last seen together" at the premise that one Jai Singh had told the complainant that they have last seen the deceased in the company of accused but as noticed hereinabove, Jai Singh was not examined. It has come in the statement of PW-2 Hem Lata that relations between the parties were cordial. PW-7 Bharat Kishor has also admitted in his cross-examination that relations between Nathimal and Khacheru were cordial. In his cross-examination, he categorically deposed that he did not remember the date on which he came to know about the murder of Rohtash. The incident had taken place on 16.04.2009 and the application was filed on

07.07.2009. According to death report Ex.D16, it was the case of road side accident as per column no.12. The complaint was filed vide complaint case no.73 of 2013 and the committal order was passed on 09.09.2014. No family member would remain silent for about 5 years in case their son was murdered. According to the post-mortem report, police has informed the doctor who had conducted the post-mortem examination, that it was road accident. In death report also, it is mentioned that Rohtash had received injuries due to road side accident. PW-4 Nathimal has also claimed money under insurance and Rajiv Gandhi Accident Yojna. The prosecution has failed to prove the charges against the appellants beyond reasonable doubt.

20. Accordingly, the appeal is allowed. The judgment and order dated 07.07.2017 are set aside. Appellants are acquitted of the charges framed against them by giving them benefit of doubt. They are in custody. They be released forthwith, if not required in any other case. Their release warrants be issued.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 17, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No