

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

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**CRA-D-787-DB-2017 (O&M)
Date of Decision :06.09.2019**

Naresh Kumar

... Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Abhilaksh Grover, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. B.S.Tewatia, Advocate for the complainant.

HARNARESH SINGH GILL, J.

The present appeal has arisen out of the judgment of conviction and order of sentence dated 26.07.2017 passed by the Additional Sessions Judge, Palwal, vide which the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- in case FIR No. 244 dated 28.07.2015 under Section 302 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Chandhut.

2. As per the prosecution case, a telephonic information was received in the Police Station regarding death of Satbir as his body was lying in the mortuary of G.H. Palwal. Statement of Ravinder son of Satbir (deceased) had been recorded that on 27.07.2015 at night, Satbir went to sleep at the tubewell in the fields and that in the morning, he saw that his father had been murdered with sharp edged weapon by Partap, Hansha, Dev

Raj, Amar Chand and Naresh. On the basis of the said statement FIR in this case was registered.

3. After completion of investigation, challan was presented in the Court.

4. Charge was framed against the appellant under Section 302 of IPC to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution had examined as many as 10 witnesses.

6. In the statement recorded under Section 313 Cr.P.C., the appellant-accused denied the allegations against him and pleaded innocence.

7. PW3-Ravinder son of Satbir stated that two days earlier, the appellant had threatened his father in their fields and when he went to the place of occurrence on 27.07.2015 at 8:00 a.m. he saw the dead body of his father outside the tubewell with 8/9 injuries on his body and moved an application Ex.P1 which bore his signature wherein he had specifically named Partap, Hansha, Dev Raj, Amar Chand and Naresh for the murder of his father.

8. PW4-Inspector, Ram Kishan stated that during investigation he had recorded the statement(s) under Section 161 Cr.P.C. and visited the place of occurrence on 05.10.2015 and during investigation conducted by DSP, Partap, Hansha, Dev Raj and Amar Chand were found innocent. PW5-Dr. Sarfaraz stated that post mortem report Ex.PW5/B bore his signatures along with the signatures of Dr. Deep Kishore and Dr. Rajvinder Singh Malik. In cross- examination, this witness stated that the possibility of the injuries having been caused with different weapons, could not be ruled out.

It was further stated that injury No. 3 was fatal and probable time between the injury and death was around one day. As per PW6-Ravinder Singh Dahiya, site plan Ex.P-3 was prepared by him on 05.10.2015 and as he did not notice any dead body, he was unable to tell in which direction the dead body was lying on the cot. PW7-HC Virender Singh, stated that he had visited the place of occurrence with the Investigating Officer and blood stained earth, mobile and mosquito protector were taken into possession vide memo Ex.P-2 and the same was signed by him and the appellant got demarcated the place of occurrence on 30.07.2015 and memo of demarcation (Ex.P-5) was prepared. But, in his cross-examination, he stated that in Ex.P-4 i.e. recovery memo, mobile number and IMEI number were not mentioned nor the same were recovered. Axe was sealed but no independent witness was joined in the investigation. He further stated that the place of occurrence/recovery was within the reach of general public.

9. PW8-HC, Sube Singh stated that appellant was arrested on 30.07.2015 and was interrogated in the police station in presence of private persons. In his cross-examination, this witness admitted that in the disclosure statement (Ex.P-8) suffered by appellant, there were various cuttings and overwriting in respect to the words and dates.

10. Jasbir Singh, SHO appeared as PW-10. He stated that he lifted the blood stained earth, one mobile phone and mosquito net. He further stated that when he reached the place of occurrence, the body was shifted to G.H., Palwal and no foot prints were found at the spot and the appellant was arrested on 29.07.2015 as his name was reflected in the complaint and he was interrogated on the spot for one hour at the place of arrest i.e. Lulwari.

11. As per Forensic Science Laboratory report dated 10.03.2016

and result of serological analysis of blood, no blood was detected on the axe as the material was disintegrated.

12. After taking into consideration the evidence on record, the Additional Sessions Judge, Palwal, vide judgment of conviction and order of sentence dated 26.07.2017, convicted and sentenced the appellant, as noticed above.

13. Aggrieved of the said judgment and order, the appellant has preferred the present appeal.

14. We have heard learned counsel for the parties and have also gone through the record of the trial Court, with their able assistance.

15. It has been argued by the learned counsel for the appellant that the prosecution has failed to prove or place on record any evidence which can connect the appellant with the commission of crime, the occurrence being a blind murder case. It is argued that PW3-Ravinder is the son of deceased and admittedly he was not present at the time of occurrence and he stated that two days prior to the date of occurrence Naresh (appellant) had threatened his father (since deceased) in their fields and named four other persons i.e. Partap, Hansha, Dev Raj and Amar Chand, being involved in the crime.

16. Learned counsel for the appellant has further alleged that PW2-Rakesh, nephew of deceased, had not named anybody either in his statement or in his cross-examination. Even the recovery of axe is doubtful because as per FSL report regarding serological analysis of blood on axe, the material was found disintegrated. The prosecution had allegedly taken the mobile in possession along with other articles from the place of crime, but neither the number of mobile nor IMEI number had been recorded nor call details had been placed on record. Besides there were lot of discrepancies in the

prosecution witnesses.

17. Per contra, learned State counsel has argued that the investigating agency has successfully proved the case of murder beyond the reasonable doubt. Ravinder, son of the deceased had categorically named the appellant as two days prior to the murder of his father, appellant had threatened his father in the fields and the weapon of crime had been duly recovered on the basis of the disclosure statement of the appellant. It is further argued that PW2-Rakesh, who is the nephew of the deceased had also corroborated the ocular testimony of Ravinder (son of deceased). It is still further argued by the learned State counsel that PW5-Dr. Sarfaraz, Medical Officer, G.H. Palwal, being member of the Board of Doctors, who had conducted the post mortem examination on the dead body of Satbir (deceased) stated that the injury on the vital organs especially spinal cord had been found to be sufficient to cause death in the ordinary course of nature.

18. After hearing the learned counsel for the appellant and learned State counsel, we do not agree with the assertions made by learned State counsel.

19. The case in hand is a blind murder and the prosecution has failed to link the appellant with the murder of the deceased -Satbir. The prosecution had laid much stress on the confessional statement made by the appellant. The axe allegedly recovered, was not put in a sealed cover and even as per the FSL report, coming out with serological result of blood on axe found to be 'material disintegrated'. Even after the recovery of mobile phone from the place of occurrence, the prosecution agency has failed to find out the number of the phone and even IMEI number to be mentioned in

recovery memo, nor the call details had been placed on record.

20. As far as the prosecution witnesses are concerned, PW3-Ravinder stated that the appellant had threatened deceased (his father) two days prior to the date of occurrence. Even PW2-Rakesh, who is the nephew of the deceased, did not name anybody in his examination before the Court nor in his cross-examination. Dr. Sarfaraz had stated that the possibility of injuries by different weapons could not be ruled out.

21. We have also taken into consideration the testimony of PW10-Jasvinder Singh, SHO, who stated in his cross-examination that no foot prints were found at the spot during investigation and the appellant had been arrested as his name reflected in the complaint given by PW3-Ravinder, son of deceased. Much doubt is found in the manner in which investigation had been conducted as PW10, SHO Jasvir Singh stated that appellant had been arrested from Lulwari on 29.07.2015 at 4:30/5:00 p.m. and was interrogated at the spot for about an hour but despite that no independent witness had been joined. PW8- HC, Subey Singh stated that appellant had been interrogated on 30.07.2015 for one hour after taking him out of lockup and during this period many people had visited the police station, but no private person was made to join the investigation.

22. Moreover, we do not find any motive on the part of the appellant. In the present case, which is based on circumstantial evidence, the chain of circumstances is not complete. There are material contradictions and discrepancies in the statements of prosecution witnesses.

23. Learned counsel for the appellant has also relied upon the judgment passed by Apex Court in the case ***Prem Thakur Versus State of Punjab***, 1983 AIR (SC)61. Relevant extract of the judgment reads as

under:-

11. *“The High Court could not but be aware of the principle that in a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. That is to say, the circumstances relied upon as establishing the evolvment of the accused in the crime must clinch the issue of guilt. Very often, circumstances which establish the commission of an offence in the abstract are identified as circumstances which prove that the prisoner before the court is guilty of the crime imputed to him. An a priori suspicion that the accused has committed the crime transforms itself into a facile belief that it is he who has committed the crime. Human mind plays that that trick on proof of the commission of a crime by resisting the frustrating feeling that no one can be identified as the author of that crime. In the case before us, there is no doubt that five persons were murdered. Unquestionably, every effort had to be made to find out who committed those murders. But the duty is not done by holding someone or the other guilty somehow or other. In the instant case, the circumstances attendant upon the incident militate entirely against the conclusion that the five murders were committed by the appellant. The very pattern of the crime belies that conclusion. We are unable to share the High Court's view that the evidence showing "that the appellant was present with the deceased persons on the evening of November 8, 1980 and he was then missing from there on the next morning proves the offences alleged against the appellant beyond any shadow of doubt". In support of its conclusion that the appellant had committed the murders, the High Court has even pressed into service*

the circumstances that the appellant was not present 'at the place from-which the dead bodies were recovered' the next morning. These are equivocal circumstances on which it is hazardous to base the conviction."

24. In the judgment reported as ***Sangili @ Sanganathan Versus State of Tamil Nadu***, 2014 (10)SCC 264, while relying on the case ***Mustkeem alias Sirajudeen v. State of Rajasthan***, 2011(3) RCR (Criminal) 766, the Apex Court has observed as under:-

*"24. In a most celebrated case of this Court **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116** in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under:- (SCC p. 185)*

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(iii) The circumstances should be of a conclusive nature and tendency,

(iv) They should exclude every possible hypothesis except the one to be proved, and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been

done by the accused".

25. We, therefore, conclude that suspicion, however strong, it may be, cannot be a substitute for the proof. As present case completely rests upon circumstantial evidence wherein the link evidence is missing, the finding of guilt recorded by the trial Court is totally erroneous. Hence the appellant is entitled to benefit of doubt.

26. In view of the above, we allow this appeal and set aside the judgment of conviction and order of sentence dated 26.07.2017 passed by the Additional Sessions Judge, Palwal. The appellant is acquitted of the charge framed against him. The appellant is in custody, therefore, he be released forthwith, if not required in any other case.

27. Since the main case is decided pending CRM if any, also stands disposed of.

06.09.2019	(AJAY TEWARI)	(HARNARESH SINGH GILL)
pooja saini	JUDGE	JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>