

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

(1) CRA-D-864-DB of 2017 ( O&M )

Parveen alias Lilu and another .... APPELLANTS

Versus

State of Haryana ..... RESPONDENT

(2) CRA-S-2936-SB of 2017

Amit .... APPELLANT

Versus

State of Haryana ..... RESPONDENT

(3) CRA-S-2968-SB of 2017

Sunil .... APPELLANT

Versus

State of Haryana ..... RESPONDENT

(4) CRA-S-2980-SB of 2017

Suresh .... APPELLANT

Versus

State of Haryana ..... RESPONDENT

Reserved on : 06.03.2019

Date of decision : 14.03.2019

**CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA**

**HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Akashdeep Singh, Advocate,  
for the appellants in CRA-D-864-DB-2017.

Mr. Abhimanyu Antil, Advocate, for  
Mr. Sanjeev Kodan, Advocate,  
for the appellant in CRA-S-2936-SB-2017.

Mr. Rakesh Nehra, Advocate,  
for the appellant in CRA-S-2968-SB-2017.

Mr. Keshav Pratap Singh, Advocate,  
for the appellant in CRA-S-2980-SB of 2017.

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

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**RAJIV SHARMA, J.**

1. Since common questions of law and facts are involved in CRA-D-864-DB of 2017, CRA-S-2936-SB of 2017, CRA-S-2968-SB of 2017 and CRA-S-2980-SB-2017, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 31.07.2017 and order dated 01.08.2017, rendered by learned Additional Sessions Judge, Rohtak, in Sessions Case No. 2 of 2012/2016. Appellants Parveen alias Lilu, Rakesh, Amit, Sunil and Suresh were charged with and tried along with their co-accused Vikram alias Monu and Ombir alias Commando for the offences punishable under Sections 364/302/201/34 of the Indian Penal Code. Appellant Rakesh along with co-accused Ombir alias Commando were also charged with and tried for the offence punishable under Section 25 of the Arms Act, 1959. The appellants were convicted and sentenced as under :

| Name of appellant                      | Offence under which sentenced | Period of rigorous imprisonment | Amount of fine imposed | Rigorous imprisonment in lieu of default of payment of fine or any part thereof |
|----------------------------------------|-------------------------------|---------------------------------|------------------------|---------------------------------------------------------------------------------|
| Parveen, Amit, Sursh, Rakesh and Sunil | 364/34 IPC                    | Seven years                     | Rs. 50,000/- each.     | One year each.                                                                  |
| Parveen and Rakesh                     | 302/34 IPC                    | Life                            | Rs. One Lakh each.     | One year each.                                                                  |
| Parveen and Rakesh                     | 201/34 IPC                    | Five years                      | Rs. 20,000/- each.     | Three months each.                                                              |

All the substantive sentences were ordered to run concurrently. Accused Vikram alias Monu and Ombir alias Commando were acquitted of the charges framed against them.

3. The case of the prosecution, in a nutshell, is that on 16.06.2012, complainant Ram Kumar (PW.8) lodged a complaint at Police Station Meham, stating therein that on 14.06.2012, he along with his sons Rohtash (PW.1) and Shamsher had gone to attend the marriage of Balraj's son in his neighbourhood. At about 8.00 PM, a fight ensued between Parveen alias Lilu and three others with Shamsher. They threatened to abduct or kill Shamsher. At about 10.00 PM, aforesaid Parveen and others forcibly tried to take away Shamsher in a car. The complainant and his son Rohtash tried to intervene. However, they were prevented. His son Shamsher was taken away in a white coloured Swift D'zire. Shamsher had not come back. The complainant made enquiries on his own and came to know that his son had been abducted by Parveen, Rakesh son of Rohtash, Amit son of Bhup Singh

and Suresh. The FIR was registered. Arrests were made. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They examined two witnesses in their defence.

5. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

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

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

8. PW.1 Rohtash deposed that there was a marriage of Amit son of Balraj on 14.06.2012. His family members were present. The friends of Amit, namely Parveen alias Lilu, Amit son of Bhup Singh, Suresh and Rakesh, all residents of village Makdoli Kalan, were also present. These four persons started quarreling with his brother Shamsheer at about 8.00 PM at the time of *Ghurchari* ceremony. At about 10.00 PM, all the above named four accused forcibly took his brother Shamsheer in Swift car bearing registration No. HR-12T-0672, which was driven by accused Sunil. They

threatened to kill his brother. He and his father Ram Kumar tried to prevent them. However, they pushed them. They fell down. On the same night, he along with his father reached Police Station Sadar Meham to lodge the complaint, but the police advised them to wait for some time. Thereafter, on 16.06.2012, they reported the matter to the police. In his cross-examination, he deposed that they had not gone to the Police Station in the evening on 15.06.2012, as the Sarpanch told them to collect other members of the family and then they will go to Police Station in the morning on 16.06.2012. They went to the Police Station on 16.06.2012 at about 9.00/10.00 AM. They met the SHO. Then their complaint was recorded. They met the Sarpanch in late hours on 15.06.2012. They had not disclosed to the police that they had gone to the house of the Sarpanch. He had given the father name and physical features of accused Suresh and Amit. He was confronted with statement Ex.DA, wherein it was not so recorded. No test identification parade of accused Suresh was conducted in his presence. One false case was registered against his brother Shamsher by the police. He did not know the nature of case against Shamsher. His brother Shamsher remained in judicial custody for one and half years. On 14.06.2012, his brother Rajesh was not present in the house. The remaining members were present. Shamsher was kidnapped during the *Ghurchari* ceremony before reaching the house of Amit near the house of Chhotu Ram Pandit. His brother Shamsher had no enmity with the accused. Shamsher had studied upto 10 + 2 standard.

9. PW.3 Constable Jai Bhagwan deposed that on 20.06.2012, SI/SHO Ram Kishan interrogated accused Amit. He made disclosure statement Ex.P3. Thereafter, SI/SHO Ram Kishan interrogated accused Suresh. He

made disclosure statement Ex.P4. Accused Amit and Suresh also demarcated the main gate of house of accused Ombir vide memos of demarcation Ex.P5 and Ex.P6, respectively. In his cross-examination, he categorically admitted that nothing was recovered from the possession of any of the accused in pursuance of their disclosure statements.

10. PW.4 Rajesh is brother of deceased Shamsher. He deposed that on 16.06.2012 at about 4.00 PM, the police telephonically informed him from village Makdoli Kalan that dead body of a person was lying in the village and asked him to identify it. Accused Parveen had pointed the place where he had buried the dead body of Shamsher. The soil was removed and dead body of his brother Shamsher was exhumed. He along with his uncle Ram Phal identified the dead body. They signed the inquest proceedings Ex.P7. On 08.07.2012, accused Rakesh, in pursuance of his disclosure statement, led the police party to Vikas Nagar Maheshri Dharuhera. He got recovered two shoes under the plastic bag from his rented house. The shoes were taken into possession vide memo Ex.P8. These were of Adidas Company. These shoes belonged to his brother Shamsher. He was wearing these shoes on 14.06.2012. In his cross-examination, he deposed that he came back to his house at about 2.00/2.30 AM on 15.06.2012, after receiving a telephonic message from his brother about the kidnapping of his brother Shamsher. They contacted the Sarpanch. Since the night of 14/15.06.2012, till 4.00 PM of 16.06.2012, they did not search his brother Shamsher anywhere, except to approach the police. Volunteered that they contacted some persons through telephone. They had gone to Police Station Meham on 16.06.2012 at about 10.00 AM. His statement was recorded by

the police on 16.06.2012.

11. PW.8 Ram Kumar is the material witness. He deposed that on 14.06.2012, to attend the marriage of Amit son of Balraj, friends of Parveen alias Lilu, Suresh, Amit and Rakesh had come to the village in a car bearing registration No. HR-12T-0672. The car was driven by Sunil Driver. These boys had a scuffle with his son Shamsher. They threatened his son of dire consequences by saying that they will kidnap and murder him. They tried to kidnap his son Shamsher at about 10.00 PM. He and his son Rohtash objected to it. They were prevented. They fell down. They kidnapped his son in the said car. He submitted an application Ex.P23 to the police on 16.06.2012. In his cross-examination, he admitted that he did not mention the name of accused persons in his statement Ex.P23, but he knew these persons earlier. He did not know the relationship of Balraj and the accused persons, but the accused used to come to the village at the house of Balraj. He had not mentioned the name of father of Suresh and Amit in his statement. Rakesh, Parveen, Amit, Sunil and Suresh had kidnapped his son at about 10.00 PM on 14.06.2012 near the *Choraha*. He had not mentioned in his statement to the police that dispute arose again at 10.00 PM near the *Choraha*. Except him and his son, no body else had seen the accused persons. They went to the Police Station on 14.06.2012, but the SHO told them that it was marriage time and they should not be harassed. Name of SHO was Ram Kishan Dahiya. The SHO had also threatened them. His son Shamsher had remained in judicial custody for about one and half year in a case registered against him at Bhiwani.

12. PW.9 Ravinder deposed that on 16.06.2012 at about 4.00/4.30 PM, he received information from Rajesh that a telephonic message from SHO, Police Station Meham, was received that a dead body was lying at village Makdoli Kalan near the Stadium. He along with him went there. Blood and blood stained earth was lifted from the spot. Accused Parveen had led the police party to the place of concealment of the dead body of Shamsher. He got the dead body of Shamsher and one *dari* (carpet) recovered from the pit near the northern wall of Makdoli Stadium. In his cross-examination, he deposed that Parveen was earlier known to him. They had made an application to the police on 15.06.2012 but it was not attended to. They reached near the dead body at about 6.00 PM.

13. PW.12 HC Ramphal Singh deposed that accused Rakesh, in pursuance of his disclosure statement, led the police party to Vikas Nagar Maheshri Dharuhera. He got the shoes of deceased Shamsher recovered. Accused Ombir also made disclosure statement Ex.P31.

14. PW.13 Sumit Kumar had prepared the scaled site plan Ex.P32 of the place of occurrence.

15. PW.14 Head Constable Mahabir deposed that accused Parveen alias Lilu in pursuance of his disclosure statement led the police party to the place of concealment and got recovered one spade from the disclosed place. It was taken into possession vide memo Ex.P33.

16. According to PW.15 Constable Dalip Singh, accused Ombir alias Commando in pursuance of his disclosure statement led the police party to the place of concealment and got recovered one spade from under the heap of wood sticks in his *Gher* at village Makdoli Kalan.

17. PW.17 Constable Satvir Singh deposed that on 17.06.2012, he and ASI Dharampal remained associated in the investigation of this case. Accused Parveen made a disclosure statement Ex.P48 and offered to get a *Kassi* (spade) recovered from his house. *Kassi* (spade) was got recovered.

18. PW.20 SI Shamsheer Singh deposed that accused Parveen made disclosure statement Ex.P51, on the basis of which demarcation of the place of occurrence took place.

19. PW.21 EHC Suresh Kumar deposed that accused Ombir alias Commando got recovered one black colour purse of the deceased. In his cross-examination, he admitted that purse was old and in torn condition.

20. PW.22 ASI Dharampal deposed that the dead body was taken out from the ground. Accused Parveen had made disclosure statement Ex.P48 on 17.06.2012, on the basis of which spade was got recovered.

21. PW.23 Ishwar Singh deposed that on the basis of disclosure statements made by accused Parveen and Ombir, spades were recovered. He also deposed that accused Rakesh had got recovered the shoes of the deceased. Accused Ombir had also got recovered one purse from the almirah.

22. PW.25 SI Narendra Singh testified that accused Ombir made a disclosure statement Ex.P56, on the basis of which a knife was got recovered from near the wall of dispensary. Accused Rakesh also made a disclosure statement Ex.P57, on the basis of which a knife was got recovered. Both the knives were taken into possession.

23. PW.27 Balraj deposed that on 14.06.2012, marriage of his son Amit was performed. Amit, Rakesh and Suresh attended the marriage. They

came by Swift D'zire car bearing registration No. HR-12T-0672. On 16.06.2012, accused Parveen was interrogated by the police. He made a disclosure statement. According to the disclosure statement, during the *Ghurchari* ceremony, five persons, namely, Amit, Parveen, Rakesh, Suresh and Sunil had altercation with Shamsher. These persons forcibly took away Shamsher in their car at about 11.30 PM to village Makdoli. Two more persons, namely Ombir and Vikram alias Monu met them at village Makdoli. They took Shamsher to the *Gher* of Ombir. Shamsher was made to sit on *dari* (carpet) lying on a *Takhat* (cot). They offered liquor to Shamsher. Thereafter, Parveen and Monu caught him. Ombir and Rakesh caused injuries with their knives. Thereafter, body of Shamsher was hidden in a pit.

24. PW.6 Dr. Jitender Kumar deposed that he was posted as Medical Officer at General Hospital, Rohtak, on 16.06.2012. On that day, dead body of Shamsher was exhumed from the pit near the wall of the stadium of Makdoli Kalan, in his presence as well as in the presence of the Tehsildar.

25. PW.16 Dr. Pawan Mittal deposed that he conducted the post-mortem examination on the body of Shamsher. The post-mortem report Ex.P38. He had noticed the following injuries on the body of the deceased :

- (1) A sharp cut of size 8 x 3 cm was present over the lower front aspect of neck, situated transversely on both sides across the midline, 7 cm below the chin with tailing over its right margin. The margins were regular and clean cut.

- (2) A stab wound, spindle shaped, of size 2.5 x 1.5 cm present over the left side front of neck over the left margin of injury no. (1) situated vertically 2 cm left to the midline. The margins were clean cut and regular. On dissection the wound was penetrating skin, underlying tissues and neck muscles. Ecchymoses present throughout the track.
- (3) A spindle shaped stab wound of size 3.8 x 2 cm present over the left front chest wall, situated vertically, 9.5 cm away from midline and 6 cm medial to left nipple. The margins were regular and clean cut. On dissection the wound was penetrating underlying soft tissues and muscles in the 4<sup>th</sup> intercostal space and underlying portion of the left lung. The lower half of the wound was beveled. The wound showed ecchymoses throughout. The left pleural cavity contained about 200 ml of dark red fluid blood.
- (4) A tear drop shaped stab wound of size 4 x 1.8 cm present over the anterior abdominal wall in the midline, situated obliquely, 2 cm above umbilicus. The margins were clean cut and regular. Part of coil of intestine was protruding out through the wound. On dissection, the wound was penetrating underlying tissues, abdominal muscles and coils of small intestine which which were showing corresponding sharp cuts. The wound was ecchymosed throughout.
- (5) A spindle shaped stab wound of size 6 x 3 cm present over the lower anterior abdominal

wall, situated obliquely 3 cm below umbilicus in the midline. The margins were regular and clean cut. The coils of intestine were protruding through the wound. On dissection, underlying tissues, abdominal muscles, mesentery and coils of jejunum were showing corresponding sharp cuts and the peritoneal cavity was full of blood clots and dark red fluid blood. The wound was ecchymosed throughout its penetration.

- (6) A tear drop shaped stab wound of size 4 x 2 cm was present over the right lower anterior abdominal wall, situated vertically, 6 cm right to midline and 3.5 cm right to injury no. (5). The margins were regular and clean cut. Portion of coil of intestine was protruding out through the wound. On dissection the wound was penetrating underlying tissues, abdominal muscles and underlying coils of jejunum. The wound was ecchymosed throughout its course.

The cause of death was haemorrhage and shock consequent to the stab injuries. The injuries were ante-mortem in nature. These were recent in duration. These were caused by sharp cutting weapon. The probable time that elapsed between injuries and death was opined to be recent and that between death and post-mortem was opined to be between 2 to 3 days.

26. The Forensic Science Laboratory report is Ex.P11. Blood was detected on exhibit-1 (blood stained earth), exhibit-6 (blood stained earth), exhibit-7 (blood stained earth), exhibit-8 (blood stained earth), exhibit-9 (blood stained earth), exhibit-10 (blood stained earth), exhibit-11 (blood

stained earth). Exhibit-2 (cotton wool swab) and exhibit3 (*Dari*) (carpet) were stained with blood stains. Blood could not be detected on exhibit-12 and exhibit-13 (*Kassis*) (spades).

27. The case of the prosecution, in a nutshell, is that marriage of Amit son of Balraj (PW.27) was being solemnized on 14.06.2012. Shamsher along with his brother Rohtash (PW.1) and father Ram Kumar (PW.8) was attending the marriage. A scuffle took place between appellants Parveen alias Lilu, Rakesh, Amit and Suresh with Shamsher at 8.00 PM. According to the prosecution case, Shamsher was forcibly taken away in a car by Parveen alias Lilu, Rakesh, Amit and Suresh at about 10.00 PM. The car was driven by appellant Sunil. Shamsher was made to drink liquor at village Makdoli Kalan. Accused Ombir alias Commando and Vikram alias Monu also came on the spot. Shamsher was killed in the *Gher* of Ombir. Statement of PW.1 Rohtash is duly corroborated by PW.8 Ram Kumar regarding the manner in which fight took place and Shamsher was taken away. The dead body of Shamsher was recovered on the basis of disclosure statement of appellant Parveen alias Lilu. The body was concealed in a pit. It was exhumed in the presence of PW.4 Rajesh. The body was sent for post-mortem examination. According to the post-mortem report, the deceased died due to haemorrhage and shock consequent to the stab injuries. The injuries were ante-mortem in nature and recent in duration. The dead body was recovered at the instance of appellant Parveen alias Lilu. The shoes of the deceased were recovered at the instance of appellant Rakesh. These were identified by PW.4 Rajesh. PW.27 Balraj has also deposed that the scuffle had taken place during the marriage ceremony of his son. One spade

was also recovered at the instance of appellant Parveen alias Lilu.

28. Learned counsel for the appellants has vehemently argued that there is delay in lodging the FIR.

29. It has come on record that the complainant and his son were trying to lodge the FIR but the same was not recorded at the earliest. They had approached the SHO of Police Station Meham as well as Sarpanch of the concerned Panchayat. The FIR should be registered at the earliest. There should not be any inordinate delay. The delay in the present case has been explained by the prosecution. According to PW.16 Dr. Pawan Mittal, the cause of death was haemorrhage and shock due to the stab injuries, received by the victim on his chest and abdomen. The probable time between death and autopsy was between 2 to 3 days.

30. The case of the prosecution is that appellants Parveen alias Lilu, Rakesh, Amit, Suresh and Sunil had kidnapped Shamsheer in a car to kill him. Suresh was merely driver of the vehicle. It has come in the statement of the Investigating Officer that Suresh was hired by appellant Rakesh as a Driver.

31. In order to prove the charge under Section 364 of the Indian Penal Code, the prosecution is required to prove forcible compulsion or inducement by deceitful means and object of such compulsion or inducement must be the going of a person from any place. The prosecution is also required to prove that there was misrepresentation, that the particular misrepresentation was the result of a plan to murder. The prosecution must establish that at the time when the victim was taken away, the accused had the intention to cause the death. Their Lordships of the Hon'ble Supreme

Court in **Badshah and others Vs. State of Uttar Pradesh,** (2008) 3 Supreme Court Cases 681 have held that ingredients of the offence under Section 364 IPC are : (1) kidnapping by the accused must be proved; (2) it must also be proved that the person was kidnapped in order (a) that he may be murdered, or (b) that he might be disposed of as to be put in danger of being murdered. Their Lordships further held that the intention for which a person is kidnapped must be gathered from circumstances attending prior to, at the time of and subsequent to the commission of the offence. A kidnapping per se may not lead to any inference as to for what purpose or with what intent the person was kidnapped. Their Lordships have held as under :-

*“13. Ingredients of the said offence are (1) kidnapping by the accused must be proved; (2) it must also be proved that he was kidnapped in order to; (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. The intention for which a person is kidnapped must be gathered from the circumstances attending prior to, at the time of and subsequent to the commission of the offence. A kidnapping per se may not lead to any inference as to for what purpose or with what intent he has been kidnapped.”*

In the instant case, it cannot be believed that Shamsher could be forcibly taken away from the village of the complainant. It has come in evidence that Shamsher was made to sit on a cot and he consumed liquor. The appellants had come to merely attend the marriage. During the *Ghurchari* ceremony, scuffle had taken place with Shamsher. According to PW.1 Rohtash and PW.8 Ram Kumar, Shamsher was forcibly taken away by the appellants in a

car. They were expected to follow the appellants. It has come in the cross-examination of PW.4 Rajesh that since the night of 14/15.06.2012, till 4.00 PM of 16.06.2012, they did not search his brother Shamsheer anywhere, except to approach the police. It has come on record that Shamsheer was also offered liquor by the appellants. Ethyl alcohol was detected in exhibits-4a, 4b and 4c, as per the Forensic Science Laboratory report Ex.P13. The prosecution has failed to prove its case against the appellants for the offence under Section 364 of the Indian Penal Code. However, the prosecution has duly proved its case for the offence under Section 302/34 of the Indian Penal Code against appellants Parveen alias Lilu and Rakesh, at whose instance the dead body and shoes of the deceased were recovered. The knives were not sent for examination to the Forensic Science Laboratory, which is serious lapse on the part of the police. However, it has not prejudiced the case of the appellants, in view of the overwhelming evidence against appellants Parveen alias Lilu and Rakesh.

32. Learned counsel appearing on behalf of appellants Parveen alias Lilu and Rakesh has vehemently argued that shoes of the deceased were not properly identified, since according to PW.4 Rajesh, he was not present at the spot. However, PW.4 Rajesh, being real brother of the deceased, identified the shoes worn by his deceased brother.

33. Though the case is based on circumstantial evidence, but the chain is complete. The trial court came to the right conclusion that there was no direct evidence against appellants Suresh, Sunil and Amit regarding murder. The trial court has come to the correct conclusion that appellants Parveen alias Lilu and Rakesh had killed Shamsheer.

34. It has also come in evidence that appellants Parveen alias Lilu and Rakesh had also tried to destroy the evidence by concealing the body of deceased Shamsher in a pit, which was subsequently exhumed. Thus, it has been proved that they have committed the offence under Section 201/34 of the Indian Penal Code.

35. Accordingly, CRA-D-864-DB of 2017 is partly allowed. Appellants Parveen alias Lilu and Rakesh are acquitted of the charge framed against them for the offence under Section 364/34 of the Indian Penal Code. However, their conviction and sentence recorded by the trial court for the offences under Sections 302/34 and 201/34 of the Indian Penal Code is upheld.

36. CRA-S-2936-SB of 2017, CRA-S-2968-SB of 2017 and CRA-S-2980-SB of 2017 are allowed. Appellants Amit, Sunil and Suresh are acquitted of the charge framed against them for the offence under Section 364/34 of the Indian Penal Code. The judgment dated 31.07.2017 and the order dated 01.08.2017 qua them are set aside. They are already on bail. Their bail bonds and surety bonds are discharged.

( RAJIV SHARMA )  
JUDGE

March 14, 2019  
ndj

( KULDIP SINGH )  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |