

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

1. CRA-D-131-DB of 2003
Date of Decision: 30.8.2019

Isham SinghAppellant

Vs.

State of HaryanaRespondent

2. CRA-D-199-DB of 2003

Hem RajAppellant

Vs.

State of HaryanaRespondent

3. CRA-S-25-SB of 2003

Satish KumarAppellant

Vs.

State of HaryanaRespondent

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

Present:- Mr. Ashit Malik, Advocate
for the appellant (CRA-D-199-DB-2003).

Mr. Arshdeep Singh Cheema, Advocate
for the appellant (in CRA-D-131-DB-2003).

Mr. Sanjay Kaushal, Senior Advocate with
Mr. A.P.Setia, Advocate
for the appellant (CRA-S-25-SB-2003).

Ms. Tanisha Peshawaria, D.A.G., Haryana.

HARNARESH SINGH GILL, J.

1. These appeals have been filed by the appellants, namely, Isham Singh, Hem Raj and Satish Kumar against their conviction under Sections 302/364/201/34 IPC in FIR No.2 dated 02.01.1996 registered at Police Station Pundri. The sentence awarded to the appellants is as under:-

Appellants Isham Singh and Hem Raj

U/s 302/34 IPC	Imprisonment for life and to pay a fine of Rs. 5,000/- each and, in default of payment of fine, to further undergo imprisonment for a period of six months.
U/s 364/34 IPC	Rigorous Imprisonment for a period of ten years and to pay a fine of Rs. 2,000/- each and, in default of payment of fine, to further undergo imprisonment for a period of three months.

Appellant Satish Kumar

U/s 201 IPC	Rigorous Imprisonment for 3½ years and to pay a fine of Rs. 2,000/- and, in default of payment of fine, to further undergo imprisonment for a period of three months.
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The above substantive sentences of imprisonment were ordered to run concurrently.

2. As per the prosecution Hari Ram approached the police on 02.01.1996 and made a statement that on 31.12.1995, while he and his son Kanwar Bhan (the deceased) were working in their fields, he noticed that appellant Isham Singh-who was their neighbour, was also working in the adjoining fields. The deceased asked him to go to the village and at the same time, in his presence appellant Isham Singh told the deceased to accompany him to Pundri to get fuel for his motor cycle. Throughout the night the deceased did not come home and on the next date i.e. on 01.01.1996, the complainant accosted appellant Isham Singh who had first

made a blanket denial saying that he had no idea where the deceased was. At that time Sat Pal PW-8, who happened to have seen the accused and the deceased on the motor cycle confronted appellant Isham Singh and told him that he had met them and even spoken to them. Thereafter Isham Singh retracted and said that they had gone together but he had dropped the deceased at village Jeetgarh Gamri and that thereafter he had no knowledge where the deceased had gone. The complainant accompanied by Sat Pal went to village Jeetgarh Gamri, but came to know that appellant Isham Singh and his son had not come to village Jeetgarh Gamri. It was then that the complainant started entertaining suspicion against appellant Isham Singh thinking that appellant Isham Singh had abducted his son for some nefarious purpose and that is why he made the report on 02.01.1996. The further case of the prosecution was that on 05.01.1996 the uncle (mother's brother of the deceased) was going to the police station Pundri in connection with the efforts to trace out the missing person and he met the SHO, who informed him that they were looking for the appellant Isham Singh. When they were going there they saw appellant Isham Singh and Hem Raj (who happens to be his brother-in-law) (coming on a motor cycle) near village Habri. They were stopped and separately interrogated and both independently made their disclosure statements regarding the location of the dead body near a ditch adjoining the canal near the Picholi head on the boundary of Gagsina village. Pursuant to that disclosure, the dead body was recovered. One strange fact which was noticed at that time was that the eye sockets of the deceased were empty and his eyeballs had been removed.

Thereafter appellant Satish Kumar was apprehended and on his disclosure

some burnt clothes and ash and a metal hook of the pant were recovered

from the fields of appellant Isham Singh. When the post-mortem was conducted it was discovered that even the kidneys of the deceased, were removed.

3. Charges were framed against accused-appellants Isham Singh and Hem Raj under Sections 302/364/34 IPC, whereas charge under Section 201 IPC was framed against accused-appellant Satish Kumar.

4. The three accused were sent up for trial and having been convicted as mentioned above they filed the present appeals before us.

During the trial the following evidence was led against them :-

“PW-1 Dr. Preeti Mehta; PW-2 Sat Pal Verma, Registration Clerk, SDM Office Kaithal; PW-3 Roshan Lal Head Constable; PW-4 Raj Pal Constable; PW-5 Mahipal Constable No.625; PW-6 Rajbir Constable No.816; PW-7 Jasbir Singh Photographer of Prime Photo Studio Jundla; PW-8 Sat Pal son of Moti Ram; PW-9 Subhash Chand son of Abhey Ram; PW-10 Jagdish Chander son of Karta Ram; PW-11 Subhash Chand son of Munshi Ram; PW-12 Hari Ram son of Ashu Ram; PW-13 Ishwar Singh son of Phool Singh; PW-14 Nathu Ram Constable No.840; PW-15 Ram Niwas Constable-draftsman; PW-16 Channa Ram Sub Inspector; PW-17 Kishori Lal Assistant Sub Inspector; and PW-18 Zile Singh Constable No.660.”

5. The statements of the appellants were recorded under Sections 313 Cr.P.C. They denied the evidence as incorrect and false. Appellant Isham Singh stated that with an intention to grab his property all witnesses had deposed falsely being related to each other.

6. Learned counsel appearing for the appellants have argued that this is a blind murder case where the appellants have been roped in only on

them are not such that every link thereof would point to the guilt of the appellants. The main argument they have raised, is that the post-mortem was conducted on 06.01.1996 and as per the Doctor, the death had occurred between 36 to 72 hours before the post-mortem (although in the opinion of the Doctor, the time of death was most likely 48 hours before death). There was no mention in the post-mortem report that there was any sign of putrefaction in the body.

7. The stand of the learned counsel for the appellants is that as per the prosecution the deceased had been murdered on the night intervening 31.12.1995 and 01.01.1996 and that was between 100-120 hours before the post-mortem. As per Doctor's opinion, death had occurred 48 hours before the post-mortem and semi digested food was found present in the body. The eyeballs and both kidneys were missing. Even on this aspect, the Doctor had stated that eyeballs and kidneys were removed after the death and especially eyeballs seemed to have been removed in an expert manner and the layman would not be able to know about the location of kidneys in the body.

8. It has been further argued that as per the medical evidence the death had occurred within 36 to 72 hours before post-mortem and the complainant met appellant Isham Singh on 1.1.1996. As per the prosecution, Isham Singh disclosed regarding gandasī recovered on his behest from Aata Panchaki kept under the heap of dry rice straws and on Satish's disclosure statement Ex. PR the half burnt clothes and ash were got recovered, whereas as per the statement of Dr. Priti Mehta PW-1, death was not caused by injury inflicted by gandasī nor there was any cut on the clothes. Thus, as per the learned counsel for the appellants, the prosecution has failed to prove

the chain of events and circumstances in order to establish the cause which

rests on circumstantial evidence.

9. Learned State counsel has argued that though the present case is based on circumstantial evidence yet by all the facts and circumstances it is established that the appellants had committed the murder of Kanwar Bhan by kidnapping him on 31.12.1995 and when on 5.1.1996, appellants Isham Singh and Hem Raj were interrogated, motorcycle of the deceased was recovered from appellant Isham Singh. It is further argued by the learned State counsel that PW-8 Sat Pal had last seen appellant Isham Singh with deceased Kanwar Bhan. On the disclosure statement of the appellant, the dead body and the clothes were recovered and taken into possession.

10. Based on the study conducted by Department of Forensic Medicine, Govt. Medical College, Nagpur, Maharashtra, learned State counsel has argued that the result of the study shows that the skin undergoes progressive morphological changes in the post-mortem period and epidermis and the dermis appear normal for 6 to 9 hours after death and thereafter degenerative changes begin.

11. We have heard the learned counsel for the appellants and the learned State counsel and have gone through the evidence on record with their able assistance.

12. The present case rests on circumstantial evidence for which complete chain of evidence should be intact and onus thereof is always on the prosecution. The motive behind the murder of Kanwar Bhan finds no place in the evidence on record. It has not been proved if there was any enmity between the appellants and the deceased. It is not on record if the appellants had some connection with human organ trading because PW-1

deceased was an act of expert hand. So, to our mind and as per entire story, the motive of the appellants for committing the alleged crime, is not proved.

13. The last seen theory, on which the prosecution evidence is banking on, is also not proved. The testimony of the relations of the deceased cannot be relied upon as there are other factors which do not link the prosecution story even if the appellants had the knowledge of the place of crime or they had got the dead body recovered.

14. The Apex Court in **Rambraksh @ Jalim versus State of Chhattisgarh, 2016(3) R.C.R. (Criminal) 330** held as under:-

“It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused. ”

15. In **Mustkeem alias Sirajudeen versus State of Rajasthan, 2011 (3) R.C.R. (Criminal) 766**, the Apex Court has held as under:-

“In a most celebrated case of this Court, [Sharad Birdhichand Sarda v. 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 the 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.”

16. It is relevant to discuss the contents of evidence by PW-1 Dr. Preeti Mehta that Dr. R.C.Mittal constituted the Board of three doctors to conduct post-mortem. As per her, 48 hours is the most probable period between death and post-mortem. The removal of kidneys and eyeballs were after death and so also the injuries. It has come on record that the organs of the deceased were removed by an expert hand and for non-professional person it is even far more difficult to locate the kidneys.

17. The post-mortem report further suggests that there was semi-digested food in the body and the body was not decomposed even though half portion of the body was in water where putrefaction is more reliable than that of a body exposed to air as body takes twice the time in water as in air to undergo the same degree of putrefaction.

establish the guilt of the appellants nor the circumstances are conclusive in nature nor any chain of evidence is made out to prove the case by prosecution beyond the shadow of a reasonable doubt. Even the recovery of weapon of offence could not connect the appellants with the alleged crime as according to the report of chemical examiner, the blood stains on the recovered articles were disintegrated.

19. In these circumstances, we find ourselves in agreement with the arguments raised by learned counsel for the appellants. Consequently, all the appeals are allowed and the impugned judgment of conviction dated 18.12.2002 and order of sentence dated 19.12.2002 are set aside. The appellants are ordered to be set free. The bail/surety bonds produced by the appellants, if any, shall stand cancelled/discharged.

20. Since the main appeals have been decided, the pending CMs, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

August 30, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes