

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

(1) CRA-D-498-DB of 2003 (O&M)
Date of Decision: 16.12.2019

Jitender KumarAppellant
VS.
State of HaryanaRespondent

(2) CRA-D-602-DB-2003 (O&M)
Mukesh KumarAppellant
VS.
State of HaryanaRespondent

(3) CRA-D-131-DB-2004 (O&M)
NavinAppellant
VS.
State of HaryanaRespondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri**

Present : Mr. Sanjay Vashissth, Amicus Curiae,
for the appellant in CRA-D-498-DB-2003 and
CRA-D-602-DB-2003.

Mr. Kulvir Narwal, Advocate for
Mr. H.C. Rahi, Advocate,
for the appellant in CRA-D-602-DB-2003.

Mr. Vinod Ghai, Sr. Advocate with
Mr. Amandeep Singh, Advocate
for the appellant in CRA-D-131-DB-2004.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

The captioned appeals have been preferred against the
common judgment dated 20.05.2003 and order dated 22.05.2003
passed by Additional Sessions Judge, (Adhoc) Fast Track Court,
Sonapat, vide which the accused/appellants were convicted and

sentenced as under:-

Offence	Sentence	Fine	In default
120-B IPC	Imprisonment for life	Rs.5000/-	RI for 2 months
364-A IPC	Imprisonment for life	Rs.5000/-	RI for 2 months
302 IPC	Imprisonment for life	Rs.5000/-	RI for 2 months
201 IPC	RI for 5 year	Rs.1000/-	RI for 1 month
384/511 IPC	RI for 1 year	Rs.1000/-	RI for 1 month
506 IPC	RI for 1 year	Rs.1000/-	RI for 1 month

Besides, accused Navin and Jitender were convicted under Section 25 of Arms Act and sentenced to undergo RI for two years and to pay fine of Rs.1000/- and in default of payment of fine to undergo RI for one month.

Similarly, accused Mukesh was convicted under Section 25 of Arms Act and sentenced to undergo RI for six months and to pay fine of Rs.500/- and in default of payment of fine to undergo RI for one month.

All the substantive sentences were ordered to run concurrently.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. This case was registered on the basis of statement Ex PO made by Sada Ram son of Sudhan resident of village Lalhara to SI Rahul Dev, SHO, Police Station Sadar, Sonapat on 21.06.2001 near Kalupur Octroi post at Sonapat at 7.15 PM. It was stated by Sada Ram to SI Rahul Dev that he is a resident of village Lalhara and he retired as a mate from irrigation department of Haryana

State. He has three sons and two daughters. His elder son is named Narender Singh and his second son is Ashok Kumar and his youngest son is Pawan Kumar. His daughters are married. On 05th May 2001 his son Ashok went away from his house situated at village Lalhara at 7 AM with his maruti car DL 8C A-2031 of blue colour without disclosing his destination to anybody. He was wearing a dark blue check shirt and khaki colour pants. When despite search he could not be traced, he gave information to police Station Sadar, Sonapat on 09.05.2001 about disappearance of his son and a report in the Daily Diary at Serial number 16 dated 09.05.2001 was entered in the police station in this regard. They have carried out search for tracing out his son Ashok Kumar at the places where his relatives were living but they could not get any clue of his whereabouts. On 21.06.2001 he was present in his house at 9 AM when his neighbour Krishan son of Tej Ram, Harijan came to his house. He told him that there was telephone call for him at his residence. On receiving this message he went to house of Krishan son of Tej Ram situated at village Lalhara and when he picked up the receiver of the telephone, he heard voice of a young man speaking from the other end of the telephone. The young man asked him whether it was old Sada Ram speaking. When he answered in affirmative the young voice told him that if he wanted to know whereabouts of his son Ashok, he must arrange an amount of rupees one lakh and after that they will tell him whereabouts of his son and he will again ring him up at 1 PM. On hearing this telephone call he was disturbed and he told elder son Narender about the telephone call. After that he was waiting for the telephone call at the house of Krishan with

his elder son Narender when the telephone again ring up at 1 PM. When he picked up the receiver he found the same voice speaking from the other end of the telephone line. When he told the speaker that it was Sada Ram who was speaking, the speaker on the other end of the line enquired him whether he has made arrangement of rupees one lakh. He asked the speaker in the name of God to tell him whereabouts of his son. Upon this the speaker used abusive language addressing him as 'Sale' and told him that he should talk in a business like manner. He told him that if an amount of rupees one lakh was not given to them by him he should forget about Ashok and remember that his other son Pawan will also be abducted and killed. He further told him that it was in his interest to pay them an amount of rupees one lakh and after that they will tell him where his son Ashok was. He told the speaker that he was arranged an amount of rupees one lakh because it was too meager a price for the life of his son. He asked the speaker as to where he should reach with the amount of rupees one lakh. The speaker then told him that he should go to the back gate of Suraj Steel Factory situated at Sonapat near railway level crossing along old Rohtak road with the money and wait for them and they will come to him and take the amount of rupees one lakh and tell him whereabouts of his son Ashok. The speaker further told him that the money was to be brought in a bag made of cloth and he should reach the back gate of Suraj Steel Factory, Sonapat at 8 PM where they shall meet him. He also warned him that if he showed cleverness of bringing police with him, he would cause no harm to them but he will loose his own life. After saying so the telephone call was disconnected. After that he consulted his family

members and was going to the police station with his son Narender when he met SI Rahul Dev at Kalupur Octroi post and got his statement recorded. SI Rahul Dev made endorsement Ex PO/1 under the statement of Sada Ram and forwarded it to police station Sadar Sonapat through constable Rajbir Singh, 121 for registration of case on the basis of which First Information Report Number 110 dated 21.06.2001 under Section 384, 506 of the IPC was registered by MHC Satyavir Singh.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court of Area Magistrate. As the offence punishable under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charges under Sections 120-B, 364-A, 506, 384, 302 and 201 read with Section 34 IPC and Section 25 of Arms Act were framed against the accused. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1, Inspector Surender Kumar, PW-2 SI Nitin Kumar, PW-3 MHC Rati Ram, PW-4 Partap Singh, PW-5 ASI Dharam Pal, PW-6 Constable Inderpal, PW-7 Constable Jagbir Singh, PW-8 HC Satyavir Singh, PW-9 HC Subhash Chander, PW-10 Sada Ram, PW-11 Dr. K.L. Sharma, PW-12 HC Balwan Singh, PW-13 Satbir Singh, PW-14 Kuldeep, PW-15 Krishan Kumar, PW-16 SI Rahul Dev, PW-17 Constable Karambir Singh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing

in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

No witness in defence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted and sentenced the accused/appellants as narrated in the first paragraph of the judgment.

On behalf of the accused/appellants, it is contended that there is no conclusive proof regarding the identification of dead body of Ashok son of Sada Ram. The description given by the complainant does not match the dead body recovered. It is further contended that to connect the accused with the disclosure statements, prosecution has tried to establish that one abandoned car was recovered by Police Station Rai (Sonepat) on 04.06.2001 vide DD entry No.17. The prosecution has tried to link the missing report Ex.PL dated 09.05.2001 of Ashok by establishing it to be the dead body of the same Ashok, having been burnt in the fields of Kunal son of Rajpal after being murdered by the appellants as per their disclosure statements and the recoveries effected from them.

It is further contended that the prosecution has failed to establish that the dead body recovered in burnt condition is of the Ashok who had left village Lehara in his car No. DL-8-CA-2031 at 7.am on 05.05.2001.

It is further contended that as per original DDR No.16 Ex.PL, the description of deceased Ashok given by his father Sada

Ram was as under:-

Age 27 years, Height 5' 11", whitish colour, long face, strong body, khakhi pant, dark blue shirt and white embroidered jutties in feet.

On the other hand, on behalf of the State of Haryana, it is contended that the deceased was son of the complainant and was duly identified by him. The accused/appellants have been rightly convicted and sentenced.

We have heard the learned counsel for the parties and have gone through the case file.

It emerges from the record that on the version of complainant PW-10, Sada Ram, one DDR dated 21.06.2001 Ex. PQ was registered. As per the DDR, one telephonic call was made by some unknown person in the neighbourhood of the complainant, namely, Krishan at 9 a.m on 21.06.2001. Another call was received at 1.00 p.m. and a demand of Rs.1 lakh as ransom was raised for revealing the whereabouts of the son of the complainant. A raiding party consisting of SI/SHO Rahul Dev along with ASI Kila Singh was constituted and all the three appellants were nabbed at Railway Crossing, Suraj Steel Factory, Rohtak Road, Sonapat. Thereafter, on the basis of disclosure statements of all the three accused made on the very next day on 22.06.2001, recoveries were shown to be effected at the instance of appellants for the purpose of connecting with the recovery of dead body on 05/06.05.2001 in the fields of Kunal son of Rajpal at Tigipur (Delhi). There is no mention of chain around the neck or *kara* in the

wrist of deceased Ashok. According to the First version of Delhi Police in the shape of FIR No.161 Ex.PB:-

“It was burnt dead body in the wheat bundle having metaled chain around the neck and thin metaled bangle kara, semi burnt underwear on the body, dead body badly burnt, fire brigade was already there.”

In inquest proceedings recorded under Section 174 Cr.P.C, in Ex.PA/1, metaled chain and metaled kara in right hand were noticed.

Further as per post mortem report, the length of the dead body was noticed at 165 cm i.e. 5'-4” with average built, bearing tattoo mark written over middle front of right arm of 'AB' however, as per original missing report dated 09.05.2001, the height of deceased was recorded as 5' 11”. There is no mention of tattoo in the original DDR. It is inexplicable as to how the height of the deceased reduced from 5'11 inches to 5'4 inches. Difference in the length of the dead body to the extent of 7 inches leads us to the irresistible conclusion that the dead body was not that of deceased (Ashok) and autopsy of some other dead body was conducted on the fateful day. The aforesaid conclusion is further fortified by the fact that the prosecution did not make any earnest efforts to link the blood samples collected from the dead body with the blood stain mattress (Ex.P-4) recovered from the almirah in the house of Mukesh in pursuance of disclosure statement dated 21.06.2001 (Ex.PZ). So, there is no connecting report to prove that the dead body recovered is of Ashok son of Sada. Not only that, as per PW-11 Dr. K.L. Sharma, there was undigested food in the stomach of

the deceased whereas it is not the case of the prosecution that as per disclosure statements of any of the accused, food was taken by the deceased before murder.

Thus, medical evidence in the shape of PMR is also different than the version given in the recorded disclosure statements of all the accused. In other words, Post mortem examination conducted by PW-11 Dr. K.L. Sharma, in Delhi cannot be of the same person, namely, Ashok. Thus, in the absence of link evidence coupled with the fact that the observation of the doctor that the face of the deceased had been totally burnt on account of both injuries caused for the purpose and the burnt marks, the Court finds that there was no identification of dead body of missing person Ashok son of Sada Ram.

Therefore, all the accused/appellants are acquitted of the charges framed against them by giving them benefit of doubt. Consequently, all the appeals are allowed.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

16.12.2019
SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No