342 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CRA-D-483-DB of 2003 (O&M)**
Date of Decision: 15.11.2019

Ravinder @ Lala .....Appellant

VS.

State of Haryana .....Respondent

(2) **CRA-D-550-DB of 2003 (O&M)**

Sanjeev @ Sonu

.....Appellant

VS.

State of Haryana .....Respondent

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan and Hon'ble Mr.Justice H.S.Madaan.**

Present : Mr. Deepinder Singh, Advocate,
for the appellant in CRA-D-483-DB-2003.

Mr. C.S. Singhal, Advocate for
Mr. D.K. Jhangra, Advocate,
for the appellant in CRA-D-550-DB-2003.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

The captioned two appeals have been preferred against the common judgment and order dated 13.05.2003 passed by Additional Sessions Judge, (Ad-hoc), Jhajjar, vide which the accused/appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.5000/- each with default stipulation.

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.Briefly stated the facts of the case are that on 12.10.1999 Bholu Ram complainant son of Ram Nath resident of village

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Khatiwal went to his field known as “Tibriwala” and saw a dead body lying in his field towards the road side. The dead body was having numerous injuries and blood was also lying at the spot. It was a dead body of some uknown young man. Some persons of the village also saw the dead body but they could not identify the same. So the complainant went to Daya Ram, Sarpanch of the village and Phool Singh, Chowkidar and told them about the presence of the dead body and so they too visited the spot and saw the dead body. The complainant then left Phool Singh near the dead body and was going to the Police Station for reporting the matter to the police when he met Azad Singh, S.I at Jhajgarh crossing where he was present on patrol duty and checking accompanied by Zile Singh and Narender Constables. So he reported the matter to him and he recorded his statement Ex.PC. It was read over to him and he put his signatures thereafter admitting the same as correct. Azad Singh S.I then made his endorsement Ex.PC/1 thereafter and sent the same to the Police Station on which formal FIR Ex.PC/2 was recorded by Tatbir Singh, HC. The Sub Inspector then visited the spot with the complainant and inspected the site. He picked up blood stained earth from the spot and sealed it into a sealed parcel and it was taken into possession vide recovery memo Ex.PB. The site plan Ex.PU was also prepared with marginal notes in his hand and the statements of the witnesses were also recorded. Surender Kumar, Constable Photographer was also called and the photographs of the dead body were also obtained which are Ex.P-1 to Ex.P-9. The Deputy Superintendent of Police also visited the spot and verified the investigation made by him. The dead body was then sent to Civil Hospital, Jhajjar for post mortem examination through Ram Singh, Constable and the dead body was identified by Bhim Singh resident of Khera, the father of the deceased. The doctor who conducted the post mortem examination over the dead body sealed the clothes of the deceased and handed over the same to Ram Singh, Constable along with post mortem report, the then inquest papers duly

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signed by him and the envelop containing the seal impression with which the parcel was sealed. The Constable delivered the same to the investigating officer who took the same into possession vide recovery memo Ex.PX.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court of Session.

Charges under Section 302 read with Section 34 IPC was framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Surender Kumar, PW-2 Jagdish Lal, PW-3 Inderpal, PW-4 Satbir Singh HC, PW-5 Bholu Ram, PW-6 Phool Singh, PW-7 Ram Mehar, PW-8 Bishamber, PW-9 Daya Ram, PW-10 H.C. Dharambir, PW-11 Uttam Chand, PW-12 Raju, PW-13 Bhim Singh, PW-14 Dr. J.K. Bhalla, PW-15 Azad Singh, PW-16 Raju, PW-17 Dalel Singh, PW-18 Satbir Singh HC, PW-19 Satnarain ASI, PW-20 Azad Singh, PW-21 Mahabir Singh, PW-22 Rohtash Singh DSP, PW-23 Bharam Parkash HC 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. It was further stated by accused Ravinder that all the witnesses are either relatives of the deceased or are from the same family. He was arrested on 12.10.1999 from his house and was kept in illegal custody upto 19.10.1999 when

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his arrest was shown. Wrong recoveries were planted upon him when neither he made disclosure statement nor got recovered anything. He never went to Bishambar Dayal nor made any extra-judicial confession.

No witness in defence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellants Ravinder @ Lala and Sanjeev @ Sonu under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment as narrated in the first paragraph of the judgment. However, accused Jagdish @ Jaggi was acquitted of the charges.

Thus, CRA-D-483-DB-2003 has been filed by accused/appellant Ravinder @ Lala and CRA-D-550-DB-2003 has been filed by Sanjeev @ Sonu.

It is contended by the learned counsel for the accused-appellants that it was case of blind murder. There is no eye witness account of the alleged occurrence. The FIR recorded by Bholu Ram PW-5, gives the version that a dead body was lying in the fields with multiple injuries. There is no direct evidence to connect the appellants with the alleged crime and the prosecution has relied upon circumstantial evidence in the shape of extra judicial confession of Bishamber, PW-8 and alleged evidence of last seen by Ram Mehar, PW-7 and recovery of clothes and knife on the basis of disclosure statement allegedly made by the accused/appellants in the presence of

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Raju PW-11.

It is further contended that none of the three circumstances alleged in the case were proved by any credible or legal evidence and so far as the evidence of PW-8 Bishamber is concerned, he has not even named the appellants. His testimony does not suggest that any extra judicial confession was made before him. The evidence of last seen propounded by PW-7 Ram Mehar stands belied by the evidence of other PWs. It is further contended that Bishambar, PW-8 is totally stranger as he is resident of village Khera while the accused/appellant Ravinder @ Lala is resident of District Sonepat and residing in Najafgarh, Delhi. Under the circumstances, the version of extra judicial confession is improbable and unbelievable. The alleged witness of recovery PW-11 Raju has not proved the factum of recovery from the accused.

On the other hand, on behalf of the State, it is contended that the learned trial Court has rightly convicted and sentenced the accused/appellants. The circumstantial evidence is complete and conclusive in nature.

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

In ***Hanumant Versus State of Madhya Pradesh (1952) SCR 1091*** it was held under:-

> "1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
> 2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they

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should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. 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."

We may refer to Sir Alfred Wills book Wills on Circumstantial evidence (Chapter VI) in which he has laid down the following rules specialy to be observed in the case of circumstantial evidence:-

Rule 1.--The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum prabandum.

Rule.2--The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.

Rule.3—In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.

Rule.4-- In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis that that of his guilt.

Rule.5-- If there by any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

Father of the deceased Bhim Singh, PW-13 deposed that his son received a telephonic call at about 6.00 p.m from Sanjeev

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regarding his arrival for taking money. His son left the house on his scooter. He did not turn up during the night. On the next day at about 1.00 p.m., he heard about recovery of a dead body by the Police and went to the Police Station Jhajjar and from there to Civil Hospital and identified the dead body of his son. Thereafter, Lala Ram and Ram Mehar also met him in the hospital and informed him that they saw his son with the accused persons on the previous night at about 8.30 pm when they were going to Jahajgarh for taking money.

Though, Lala Ram was not examined and was given up as unnecessary while Ram Mehar appeared in the witness box in support of that version as PW-7. He is Fufa (father's sister's husband) of the deceased. He is resident of village Jamalpur and had come to the house of his relative Lala Ram resident of Khatiwas for purchasing a buffalo. When Lala Ram and Ram Mehar were present at Lala Ram's house, the accused came there with the deceased on two scooters and asked for a *Pana* (an instrument) from Lala Ram as they wanted to change the wheel of one of the scooters which was got punctured. They disclosed that they were going to Jahajgarh for arranging money. Lala Ram had no direct relationship with Bhim Singh father of the deceased except that Ram Mehar is their common relative. Ram Mehar, PW-7 had deposed that the other persons were accused Sanjeev and Ravinder. The accused had taken the deceased away on the pretext of arranging money so as to make him payment. His dead body was found in a field near Khatiwas in the morning.

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According to Azad Singh S.I, PW-20, Bholu Ram, PW-5 appeared before him at 11.00 a.m., and he recorded his statement, sent the same to the Police Station, arranged a photographer and then arrived at the spot at 12.15 noon and stayed there for about three hours. Lala Ram and Ram Mehar had returned to their house between 11/12.00 noon. The spot was ½ k.m from his house. So, on hearing about the dead body he went to that place.

As regards the extra judicial confession, it has come in the evidence that Bishamber Dayal (PW-8) before whom the extra-judicial confession was made, is resident of village Khera. The deceased was also resident of village Khera. He was known to the accused earlier. He had left his village 15 years ago and had been residing at Najafgarh. He used to visit the village as other members of his family were residing there. As he and accused were resident of Najafgarh and he had been Sarpanch earlier, the accused could look towards him for some help or getting the matter compounded. According to PW-8, first Sanjeev came to him and made extra-judicial confession and requested that as he belonged to the village of deceased their matter be compounded and that they be produced before the Police. At that time the other two accused also entered his room and made the same disclosure and so he produced all of them before the Police. They could not find any better person for the purpose. Bishamber was available to them at Najafgarh.

The recovery of chhura by accused Ravinder upon which

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blood was detected, the recovery of watch by Sanjeev upon which blood was found. The pant of Sanjeev was also found having blood stains, the dealing between Sanjeev and deceased as established from the affidavit establishes the prosecution case against Sanjeev and Ravinder. In view of the sufficient evidence on record, the arguments raised by the learned counsel for the accused/appellants with regard to insufficiency of circumstantial evidence to connect the accused with crime are hereby rejected.

In view of the above evidence, the prosecution has successfully established its case against both the accused. The circumstantial evidence is complete and leads to the irresistible conclusion that the murder of Naresh was committed by none else but the accused/appellants. There is no perversity in the impugned judgment and order.

In view of the above, both the appeals are hereby dismissed. The impugned judgment and order are upheld. Accused/appellant Ravinder @ Lala is stated to be on bail. His bail bonds and surety bonds stand cancelled. He be taken into custody to serve the remaining part of the sentence.

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

(JITENDRA CHAUHAN) **(H.S.MADAAN)**
JUDGE **JUDGE**

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

15.11.2019
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