

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

**Date of Decision: 04.12.2019
CRA-D-649-DB-2003 (O&M)**

Rakesh **... Appellant**
vs.
State of Haryana **.. Respondent**

CRA-D-817-DB-2003 (O&M)

Ramesh **... Appellant**
vs.
State of Haryana **.. Respondent**

CRA-D-878-DB-2003 (O&M)

Raj Kumar **... Appellant**
vs.
State of Haryana **.. Respondent**

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI**

Present : Mr. Deepender Singh, Advocate and
Mr. Ram Krishan Rana, Advocate
for the appellant in CRA-D-649-DB-2003.

Mr. R.N.Kush, Advocate
for the appellants
in CRA-D-817-DB-2003 & CRA-D-878-DB-2003.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

VIVEK PURI, J.

The aforesaid three appeals have been filed assailing the judgment of conviction dated 17.07.2003 and order of sentence dated 21.07.2003 passed by learned Additional Sessions Judge, Hisar, thereby, convicting the appellants under Section 302 of the Indian Penal Code (for short, 'IPC') read with Section 34 and 201 IPC. The appellants were sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each

for committing offence under Section 302 IPC read with Section 34 IPC with default stipulation. They were also sentenced to undergo rigorous imprisonment for five years for committing offence under Section 201 IPC. All the sentences were ordered to run concurrently.

2. Succinctly, the facts, as put forth by the prosecution, are to the effect that Sunil Kumar (deceased) went missing on 06.03.2001. His father, namely, Ram Avtar, made a missing report to the police vide DDR No. 9 on 15.03.2003 to the effect that his son Sunil Kumar was a student of 10th Class and had gone missing since 06.03.2001 and could not be traced out despite best efforts. The particulars of the clothes being worn by the deceased were also mentioned in the DDR. Subsequently, Ram Avtar, made another report to the police on 22.04.2001 to the effect that accused-Raj Kumar was suspecting that Sunil Kumar was having illicit relation with his sister Kamlesh @ Kamli. It was suspected that Sunil Kumar has been either murdered or concealed with the intention of killing by Raj Kumar @ Langra and his associates Ramesh Kumar, Mintu and Bhola.

3. During the course of investigation, Raj Kumar @ Langra, Rakesh @ Mintu, Ramesh and Sunil @ Bhola were arrested.

4. On completion of investigation, report under Section 173 Cr.P.C. was presented. Accused-appellants were sent for trial to the Court of Session and Sunil @ Bhola was tried by the Juvenile Court.

5. In support of its allegations, the prosecution has examined 15 witnesses besides producing documentary evidence. Statements of accused under Section 313 Cr.P.C. were recorded but no defence evidence has been led by them.

6. Vide judgment of conviction dated 17.07.2003 and order of

sentence dated 21.07.2003, the appellants-accused were convicted and sentenced, as mentioned in the earlier part of this judgment.

7. Aggrieved by the abovesaid judgment, the aforesaid three appeals have been preferred by the appellants-accused.

8. We have heard the learned counsel for the appellants as well as learned State counsel and have perused the record.

9. Assailing the judgment of the learned trial Court, it has been primarily contented by the learned counsel for the appellant(s) that the case is based upon circumstantial evidence, which is traditionally a weak kind of evidence. Even the evidence with regard to extra-judicial confession has been discarded by the learned trial Court and the case of the prosecution cannot be termed to be free from reasonable doubt.

10. On the contrary, learned State counsel has defended the judgment of the learned trial Court by arguing that the same is well reasoned and chain of circumstances is complete. The appellants-accused were last seen in the company of deceased on the day of occurrence. The spot was identified by the appellants-accused persons and recovery of incriminating articles had been effected from them. Besides the deceased was having illicit relationship with the sister of Raj Kumar (accused) which provided motive to commit murder.

11. At the very outset, it may be mentioned here that it is a case of blind murder. There is no eye-witness to the occurrence. The dead body has been recovered after a period of about 45 days. The case of prosecution hinges upon circumstantial evidence. The circumstantial evidence means combination of facts creating a net without there being any tear through which the accused can escape. It is a fundamental principle of criminal

jurisprudence that the circumstantial evidence must point indubitably to the conclusion that it is the accused and the accused only who is the perpetrator of the crime and that such evidence should not only be consistent with the guilt of the accused, be incompatible with the innocence of the accused. The Court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof. The essential ingredients to prove the guilt of an accused by circumstantial evidence are:-

- (1)the circumstances from which conclusions are drawn should be fully proved;*
- (2)the circumstances should be conclusive in nature;*
- (3)all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with the innocence of the accused and;*
- (4)the circumstances should, to a moral certainty, exclude the possibility of guilt of any other person other than accused.*

12. During the course of its evidence, the prosecution has sought to rely upon the evidence with regard to extra-judicial confession, last seen together, motive and recovery of incriminating articles to fasten the criminal liability upon the accused. Although, the learned trial Court has disbelieved the evidence with regard to extra-judicial confession, but there is sufficient and reliable evidence in the form of other circumstances with regard to accused Ramesh and Raj Kumar.

13. There is a categoric statement of Raghubir Singh (PW-11) to the effect that he had seen the deceased with the accused at 8.30 p.m. on 06.03.2001. The version, as put forth by this witness, has been sought to be assailed on the score that he remained silent till 24.04.2001. It is also emerging in the statement of Raghubir Singh (PW-11) that it was only on

24.04.2001, he came to know that Sunil was missing as earlier he was out of station. There is lack of material on record to indicate that Raghubir Singh (PW-11) came to know that Sunil was missing at an earlier date which would have provided him the reason to report the matter to the police. In such circumstances, the delay in recording of statement does not, in any manner, cause any dent in the version, as put forth by him.

14. Besides, there is a motive attributed to the accused in commission of the crime. It is emerging in the statement of Rinku (PW-12) that the deceased was having illicit relationship with the sister of Raj Kumar.

15. It has been pointed out on behalf of the accused that Kamlesh was neither joined in the investigation nor examined during the course of trial. In this regard, it may be mentioned here that it cannot be expected from the sister of the accused to depose with regard to her illicit relationship so that her deposition may provide incriminating evidence against her brother. Moreover, it shall also not be expected from an unmarried girl to come forward and make a statement to justify the allegation of illicit relationship levelled against her which may damage her honour and that of her family.

16. An additional credence is available against accused Raj Kumar and Ramesh as incriminating articles have been recovered from them in pursuance of their disclosure statements. The knife used in the commission of crime has been recovered in pursuance of disclosure statement of Raj Kumar. Furthermore, the purse of the deceased containing his identity card and admission card have also been recovered in pursuance of disclosure statement of Ramesh. Recovery of weapon of offence and articles of the

deceased from the possession of the accused lend an additional credence to the case of prosecution.

17. The material on record is indicative of the fact that the deceased was having illicit relation with the sister of Raj Kumar (accused) which provided a motive to commit the murder. The deceased was lastly seen in the company of accused on the day of occurrence. The recovery of incriminating articles has been effected from accused Raj Kumar and Ramesh. Moreover, sharp cuts were also found on the clothes of the deceased.

18. The cumulative effect of the aforesaid circumstances lead to inescapable conclusion that accused Ramesh and Raj Kumar had committed murder of deceased. The prosecution has successfully proved and established the guilt of the aforesaid two accused beyond the shadow of reasonable doubt. As such, judgment of conviction dated 17.07.2003 and order of sentence dated 21.07.2003 qua accused Ramesh and Raj Kumar are upheld.

19. With regard to accused Rakesh, it may be mentioned here that the allegation regarding illicit relationship of the deceased has not been attributed with any of his relative. Even no extra-judicial confession has been made by him. Furthermore, recovery of incriminating articles has not been effected from him. In such circumstances, the case qua accused Rakesh cannot be termed to be free from reasonable doubt and he is held entitled to benefit of reasonable doubt. In such circumstances, judgment of conviction dated 17.07.2003 and order of sentence dated 21.07.2003 qua him are liable to be set aside.

20. In view of aforesaid discussion and the reasoning contained

therein, the appeals filed by appellants Ramesh and Raj Kumar are dismissed, whereas, the appeal filed by appellant-Rakesh is accepted and is acquitted. If appellants-accused Ramesh and Raj Kumar are on bail, they be taken into custody forthwith so that they may undergo the sentence imposed upon them.

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

04.12.2019
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No