

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-718-DBA of 2003 (O&M)

Date of decision : 22.11.2019

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Smt. Santro and another

.....Appellants

vs.

State of Haryana

.....Respondent

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

Present: Mrs. Anju Arora, Advocate for the appellants

. Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

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H. S. Madaan, J.

Briefly stated, facts of the case as per the prosecution story are that FIR in this case was lodged by complainant Hukam Singh s/o Chhaju Ram, resident of village Sardhana, District Sonapat, by making statement Exhibit PA to ASI Virender Singh of Police Station Ganaur, on 4.6.2000 at Khubru barrage. Inter alia he stated that he is an agriculturist by avocation and had three sons, namely, Chand, Anand and Sanjay. Chand and Anand were married. Chand had been living separately with his wife and children, whereas he i.e. the complainant alongwith his other two sons Sanjay and Anand and children of Anand, was living jointly. Sandeep a resident of Ganaur

was staying with Chand for the past 15-20 days. Anand had taken 2 acres of agricultural land from Chand on lease for a period of 5 years, for consideration amount of Rs.50,000/- in the previous year, in the month of Jesth and had paid an amount of Rs.50,000/- in cash to Chand as lease money. Besides that Chand had also borrowed an amount of Rs.30,000/- from Anand.

On 2.6.2000, at about 9.00 P.M. Anand told the complainant that he was going to the house of Chand for demanding repayment of money borrowed by him and thereafter he would go to bed. On the next day in the morning, the complainant did not find Anand at home, therefore, he went to the house of Chand and made enquiries therefrom with regard to whereabouts of Anand. Chand told the complainant that Anand did not come to him. However, Dharmender son of Om Parkash and Balbir son of Tek Chand - residents of village Sardhana had seen Anand going to the house of Chand at 9.00 P.M. on 2.6.2000. According to the complainant, he carried out search for Anand but the latter could not be traced. While he, alongwith his nephews Om Parkash and Sunehra sons of Bhana Ram and some other persons was searching for Anand on the bank of Rohtak Canal, in the area of village Saragthal, at about 4.00 P.M., they noticed a gunny bag struck in the pipe of canal outlet. Mouth of the gunny bag was tied. The gunny bag was taken out of the water. Its mouth was found tied with a piece of cloth used by women for covering her head (*odhni*). On being opened the gunny bag was found to contain dead body of Anand. Neck of Anand was found

tightly tied with a strong rope. There was injury mark on the forehead of deceased Anand. The complainant further stated that his other son Chand had committed murder of his other son Anand with help of his wife Santro and Sandeep, so that he would not have to repay the amount of money borrowed by him from Anand and then they had packed the dead body in the gunny bag and thrown it in the canal. Then after leaving Om Parkash and some other persons near the dead body of Anand, the complainant went to the Police Station to lodge a report regarding the incident, on the way he came across ASI Virender Singh (hereinafter to be referred as 'the Investigating Officer'), and got his statement recorded. Such statement was thumb marked by Hukam Singh. The Investigating Officer put his endorsement Exhibit PA/2 below such statement and sent *ruqa* to the Police Station, Ganaur, through Constable Satpal, on the basis of which formal FIR No. 159 dated 4.6.2000, for offences under Sections 302, 201 IPC read with Section 34 IPC, was registered with Police Station, Ganaur. Thereafter, the Investigating Officer accompanied by the complainant went to the spot and took into possession the gunny bag, the *chunni* and one towel. After making sealed parcels thereof, vide seizure memo Exhibit PE, he carried out inquest proceedings with regard to dead body of Anand, preparing report Exhibit PH/1 in that regard. Dead body of Anand was sent to General Hospital, Sonapat, for getting the post mortem examination conducted thereof. HC Balbir Singh and Constable Satpal were deputed for that purpose. The Investigating Officer, prepared rough

site plan of the place of recovery of dead body as Exhibit PJ. Post mortem examination was got conducted on the dead body on 5.6.2000. As per opinion given by the doctor, cause of death of deceased was asphyxia, as a result of strangulation, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. SI Ram Kishan, SHO Police Station Ganaur also went to the spot and prepared another site plan on 4.6.2000 as Exhibit PJ. He recorded statements of witnesses. HC Balbir Singh handed over sealed parcel containing belongings of the deceased which was taken into possession vide seizure memo Exhibit PK. Accused Santro was arrested by SI Ram Kishan on 6.6.2000 and she identified the place where murder of Anand had been committed by her, her husband Chand and Sandeep in the courtyard of their residential house situated at village Sardhana. A demarcation memo Exhibit PM was prepared in that regard. The Investigating Officer recorded statements of witnesses including that of Hari Singh, before whom Santro had made extra judicial confession that on 2.6.2000, at 9.00 P.M. while she was present in her house with her husband Chand and Sandeep son of Chatar Singh, when Anand younger brother of her husband Chand came there and demanded repayment of money from her husband Chand, which led to an altercation between Anand on one side and her husband, Sandeep besides Santro on the other side. Then all three of them had put the noose of a rope on the neck of Anand and strangulated him to death, they packed the dead body of Anand in a gunny bag and thereafter mouth of the gunny bag was

tied with her *chunni* and the dead body of Anand was then carried away by her, her husband and Sandeep on a bicycle from their house and thrown in the Rohtak canal, at some distance from Khubru barrage and she requested Hari Singh to produce her before the police. Santro was accordingly produced by her relative Hari Singh before SI Ram Kishan. Sandeep - accused was arrested by SI Ram Kishan on 8.6.2000. He also demarcated the place where murder of Anand was committed and memo Exhibit PM was prepared in that respect. On 1.7.2000 Om Parkash handed over two letters Exhibits P-16 and P-17 addressed by Chand accused, who was absconding at that time to his brother Sanjay, were sent by post. Those were taken into possession by police vide seizure memo Exhibit PG. Chand who was absconding could not be arrested.

On conclusion of investigation and other formalities, report under Section 173 Cr.P.C. was prepared and filed against accused Santro and Sandeep. It was so filed before Judicial Magistrate, Sonapat, who supplied copies of documents relied upon in the challan to the accused, free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, vide his commitment order dated 13.9.2000, committed the case to the Court of Sessions at Sonapat, from where it was assigned to Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat. Then finding a prima facie case, charge for offences under Sections 302, 201 read with 34 IPC, was framed against the accused Santro and Sandeep on 30.9.2000, to

which they pleaded not guilty and claimed trial.

However, Chand accused was arrested on 5.2.2001 by Inspector Jagdish Parsad. He was interrogated, during the course of which he suffered a disclosure statement Exhibit PB that he with the help of his wife Santro and Sandeep resident of Ganaur, had committed murder of his brother Anand and the *Sota* with which he caused injuries to Anand and the cycle which was used by them have been kept concealed by him in the bushes near the canal about which only he knew and can get the same recovered. Thereafter in pursuance of the disclosure statement, accused Chand got the *Sota* and Atlas cycle recovered from the disclosed place on 6.2.2001, which were taken into police possession vide seizure memo Exhibit PC. Rough site plan of the place of recovery was also prepared.

After completion of investigation, supplementary challan against the accused Chand was prepared and filed in the Court of Chief Judicial Magistrate, Sonapat, who committed the case to the Court of Session.

Thereafter charge for offences under Sections 302, 201 IPC read with Section 34 IPC was prepared against all the three accused, by Additional Sessions Judge, Sonapat, on 14.5.2001, to which Chand accused pleaded not guilty and claimed trial. Both the challans were clubbed together.

During the course of prosecution evidence, it examined Sunehra as PW-1, Jasbeer as PW-2, Hari Singh as PW-3, HC Dharamvir Singh as PW-4, HC Jaipal Singh as PW-5, Inspector

Jagdish Parshad as PW-6, Hukam Singh as PW-7, Dr. R.N. Tehlan as PW-8, ASI Virender Singh as PW-9, SI Ram Kishan as PW-10, Suresh as PW-11, Jagbir Singh as PW-12, Constable Jagbir Singh as PW 13 and Constable Kanwar Singh as PW-14. Thereafter the prosecution evidence was closed after tendering FSL report as Exhibit PO.

After closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.PC., in which all the incriminating circumstances appearing against the accused were put to them, to which they denied. They examined Krishan Chander Patwari Halqa Pugthala as DW-1, who had brought summoned register containing jamabandi relating to the year 1996-97. Thereafter the defence evidence was closed.

After hearing the arguments, the Additional Sessions Judge (Adhoc), Fast Track Court, Sonapat, vide judgment dated 11.7.2003, found that the prosecution had failed to prove its charge against accused Sandeep, therefore acquitted him of the said charge, whereas convicted Chand and Santro for offences under Sections 302, 201 read with Section 34 IPC, sentencing them to imprisonment for life and to pay an amount of Rs.5,000/- as fine and in default of payment of fine to undergo rigorous imprisonment for a period of three months more each under Section 302/34 IPC and to undergo rigorous imprisonment for a period of five years and to pay an amount of Rs.2,000/- as fine and in default of payment of fine to undergo rigorous imprisonment for a period of two months more

each under Section 201/34 IPC, vide order dated 14.7.2003.

The accused- convicts, felt aggrieved by the said judgment and have approached this Court by way of filing an appeal, notice of which was given to the State.

We have heard learned counsel for the parties, besides going through the record.

In this case, though there is no direct evidence of the incident, but chain of events is complete, which clearly points out towards guilt of the accused.

The first and foremost thing to be considered is that complainant Hukam Singh is none else but father of the accused Chand and father-in-law of accused Santro. He would have been the last person to involve his real son and son's wife in a false case without any rhyme and reason. He, having lost his younger son Anand, it would have been his earnest effort to ensure that the persons responsible for the death of his son Anand were brought to book and punished suitably rather than screening the actual culprits and involving the innocent persons, more particularly, his own son and daughter-in-law, in this case without any rhyme and reason.

Secondly, there is an extra judicial confession of Santro made before PW Hari Singh, in which she made a clean breast of crime committed by the accused. Normally such type of confessions are made before an influential person or a near relative. Hari Singh is none else but a paternal uncle of Chand, being brother-in-law of Hukam Singh. Therefore, Santro could naturally impose confidence

in him and blurred out the truth regarding the incident before him. Hari Singh getting his statement recorded as PW-3 has categorically stated that on 6th of month of Jesth, while he was present in village Sardhana at the house of Om Parkash, then Santro came to him and said that '*Phupha*' we had committed a mistake and this mistake was done by Chand, her husband and one boy resident of Ganaur and that they had murdered Anand by strangulation with a rope and also told him that they have thrown the dead body in the Sardhana canal. She also told him that they have shifted the dead body in a gunny bag on a bicycle and that on his making noise about the occurrence, the police came to the village and took Santro with them. Merely because he is a close relative of Hukam Singh, he cannot be termed to be an interested witness favourably inclining towards the complainant. He is equally related to Chand and his wife Santro and without any rhyme and reason he would not make a wrong statement.

Thirdly, PW-1 Sunehra had categorically stated that on 2.6.2000 while he was returning from his fields to his house at about 10/11 P.M. and when he reached near the fields of Chander, then he found all the three accused going on the other direction alongwith a cycle. A gunny bag was kept on the cycle containing something and on being asked Chand told him that they were going to village Puthla to meet his Sadhu (brother-in-law). That is also a very vital piece of evidence connecting accused with the crime. Although the trial Court has acquitted accused Sandeep. However, for the said reason the statements of prosecution witnesses could not be disbelieved. The

maxim *falsus in uno, falsus in omnibus* i.e. false in part, false in whole, is not made applicable by the Courts in India, rather the Courts are required to separate the chaff from the grain i.e. truth from the falsehood and so deposition of a witness, which is found to be cogent and convincing can be believed and relied upon, whereas the other part which is found to be suspicious and improbable, can be ignored. From the statement of PW-6 Inspector Jagdish Parshad, it comes out that when accused Chand Singh was arrested in this case on 6.3.2001, he during the course of interrogation, had suffered a disclosure statement Exhibit PB, to the effect that he had got concealed a cycle used for loading the gunny bag and a *Sota* in the bushes near the canal in the area of village Khubru, about which only he knew and could get those articles recovered and ultimately got the bicycle and *Sota* recovered which were taken into police possession. That also corroborates the prosecution story.

PW 7 Hukam Singh had stated that Anand deceased had given 2 acres of land to Chand Singh for 5 years, for a consideration of Rs.50,000/- on lease and besides this Anand had given Rs.30,000/- to Chand accused. He produced a writing in that regard as Exhibit PF. Though learned counsel for the appellants has stated that as deposed by DW-1 Krishan Chand Patwari Halqa Pugthala, Hukam Chand was having agricultural land measuring 101 kanals 16 marlas in village Sardhana, in the year 1996-97. None of his sons owned any agricultural land and on 4.6.2000 Hukam Chand owned 101 kanals 16 marlas of land but he had sold 66 kanals 8 marla of

land. Hukam Chand was himself cultivating the land owned by him according to the record. But in the villages, it is not uncommon for a registered owner of land to give land to his sons proportionately, under a family settlement, for the purpose of cultivation. Such giving of land and possession to sons may not be reflected in the revenue record. Thus it is quite possible that Hukam Chand continued to be reflected in the revenue record as owner but had given chunks of land to his sons, out of which Anand had given 2 acres of land to Chand, for the purpose of cultivation, on payment of lease money and there was dispute between the brothers in that regard. However, document Exhibit PF very well corroborates the case of the prosecution. Though suggestions have been given to Hukam Chand in his cross examination that he wanted to develop illicit relations with Santro and for that reason Chand had separated from him or that he had developed illicit relations with wife of Anand and on being seen in a compromising position by Anand and on his raising objections, Hukam Chand himself had committed murder of Anand and to save himself he had concocted a story and implicated Chand, Santro and Sandeep. The entire story seems to be improbable and unworthy of acceptance. There is nothing on record to show that Chand or Santro ever lodged any complaint with the Gram Panchayat or any village elder or relative in that regard, complaining against such misconduct of Hukam Chand. They could have brought this fact to the notice of Investigating Agency or higher police officers and that aspect could have been investigated. It seems that just to wriggle

out of tight corner, such a plea has been invented and it is devoid of any merit.

Thus the prosecution had proved its charge against accused Chand and Santro conclusively and affirmatively. The judgment passed is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therewith, which might have called for interference by this Court on the point of conviction or sentence.

The appeal being without any merit, stands dismissed.

22.11.2019
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(Jitendra Chauhan)
Judge

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No