

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 06.09.2019

1. CRA-D-939-DB-2014 (O&M)

Hanuman Appellant

versus

State of Haryana
..... Respondent

2. CRA-D-566-DB-2014 (O&M)

Bharat Walia Appellant

versus

State of Haryana
..... Respondent

3. CRA-D-697-DB-2014 (O&M)

Jaspal @ Tenny @ Tony Appellant

versus

State of Haryana
..... Respondent

4. CRA-D-815-DB-2014 (O&M)

Ramesh Kumar @ Kaka Appellant

versus

State of Haryana
..... Respondent

5. CRA-AD-29-2016 (O&M)

State of Haryana Appellant

versus

Bharat Walia
..... Respondent

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

Present : Mr. A.S.Rai, Advocate and
Ms.Vijay Lakshmi, Advocate
for the appellant (CRA-D-939-DB-2014).

Mr. Nand Lal Sammi, Advocate and
Mr. Hitesh Kumar Sammi, Advocate
for the appellants (CRA-D-566-DB-2014 and
CRA-D-697-DB-2014).

Mr. Ravinder Banger, Advocate for
for the appellant (CRA-D-815-DB-2014).

Mr. Randhir Singh, Addl. AG, Haryana
for the appellant in CRA-AD-29-2016)
for the State of Haryana in other cases.

AJAY TEWARI, J. (Oral)

1. This order shall dispose of above mentioned five appeals.
Since common questions of law and facts are involved therein, they are
being decided by this common order. For the sake of convenience, the
facts are being taken from ***CRA-D-939-DB-2014***.

2. These appeals arise out of the same FIR. Appeals bearing
Nos.***CRA-D-939-DB-2014, CRA-D-566-DB-2014, CRA-D-697-DB-
2014*** and ***CRA-D-815-DB-2014*** have been filed against the judgment of
conviction dated 07.02.2014 and order of sentence dated 17.02.2014
whereby appellants, namely, Ramesh Kumar, Hanuman, Jaspal @ Tenny
and Bharat Walia, have been convicted under Sections 364-A/302/201/34
IPC in FIR No.480 dated 09.10.2011 registered at Police Station City
Jagadhri.

3. The sentence awarded to appellants namely, Ramesh Kumar,

Hanuman and Jaspal @ Tenny is as under:-

Offence U/s	Imprisonment RI	Fine	Sentence in default of payment of fine. RI
201 IPC	10 years each	Rs.10,000/- each	06 months
302 and 364- A/34 IPC	Life imprisonment each	Rs.10,000/- each	06 months

4. Appellant Bharat Walia was further convicted under Section 386 IPC and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.50,000/- and, in default of payment of fine, to further undergo imprisonment for 6 months.

5. **CRA-AD-29-2016** has been filed against the judgment dated 07.02.2014 for grant of sentence to the accused, namely, Bharat Walia under Section 386 IPC instead of 364/34 IPC.

6. The facts are that on Dussehra, the 06.10.2011, deceased Mukul (aged 12 years) went from his house in Jagadhri to attend the Dussehra mela. At about 5.30 PM, his uncle called on his mobile to ascertain his whereabouts. He picked up the phone and informed his uncle that he was still in the mela. Since he did not come back they tried to contact him again, but his phone was switched off and they tried to call Mukul on his other mobile number i.e. 9729168689 and the phone was picked up by some person who said that his name was Aarif; that this phone with said number had been with him for the last one year and that he had no knowledge about Mukul or who he was. At that stage a missing person's complaint was lodged by the aforesaid Sunil Kumar-PW2. Next day at about 1.00 PM, a call was received from the mobile number of Mukul on the phone of Pawan Kumar, PW-4 (other uncle of

Mukul). That was a ransom call and the caller demanded Rs.50.00 lakh for the safe return of Mukul. Immediately thereafter, that phone was again switched off and the second complaint was made in respect of kidnapping. Both these complaints ultimately resulted into registration of an FIR under Section 364-A IPC. On 11.10.2011 appellant Ramesh Kumar along with appellant Bharat Walia came to the complainant's house and appellant Ramesh Kumar told them that he suspected the hand of some big gang in the kidnapping of Mukul and that he had contacts with gangsters of U.P. and that the complainant's family should accompany him to Shamli to trace out the child. Pawan Kumar accompanied Ramesh Kumar on the same very date on that trip. As per the prosecution, appellant Ramesh Kumar got the vehicle stopped near Gurdwara and went away. He came after one hour and informed Pawan Kumar that Mukul was in the custody of some big gang and he had settled his release for a sum of Rs.11.00 lakh after talking to the kidnapped boy. The family then decided to pay up the ransom money. The next day, Ramesh Kumar told them that he would go alone with the money but if anybody from the family wanted to accompany him, he would stay at a distance of 2 km away from the place, where the money was to be paid. Both the uncles accompanied Ramesh Kumar who dropped them off at Civil Hospital Ambala and moved further alone and returned after ½ an hour and informed the family members that the kidnappers had informed him that somebody else had also been following him and therefore, the deal could not be struck. At that point of time, he returned the sum of Rs.11.00 lakh. Again in the evening, he called them to his house and said that this time he would go alone for the release and

only Bharat Walia would accompany him. Bharat Walia then talked on phone with a person, named, Jaspal @ Tenny and informed him that they would come next day with the money. The next day, the aforementioned Pawan Kumar along with his father went to the house of Ramesh Kumar with the money and paid him a sum of Rs.11.00 lakh in the presence of Bharat Walia and after returning home they informed that the two appellants were also talking to one Hanuman and Jaspal @ Tenny. Thereafter neither the boy was recovered nor the money returned. They further informed the police that a sum of Rs.2.00 lakh from the account of Pawan Kumar, a sum of Rs.4.00 lakh from another account of his and a sum of Rs.5.00 lakh from the account of his cousin Sushil were withdrawn for making the payment of Rs.11.00 lakh.

7. On 15.10.2011 they were informed that a dead body had been recovered from place near Kirmach Nehar in Kurukshetra and was lying in the mortuary of Civil Hospital of Kurukshetra which was identified to be of the kidnapped child, by the family members. Subsequently, the appellants were arrested. Thereafter, in the disclosure statement of Ramesh Kumar, Hanuman and Bharat Walia, they pointed out about the place from where the ransom call had been made and one SIM on which Airtel was printed, was recovered. From the disclosure of appellant Hanuman, a double SIM mobile phone was recovered.

Thereafter, the appellants were arrested and sent up for trial. Learned trial Court convicted the appellants and sentenced them. It is against this conviction and sentence that the appellants have filed the four appeals and the fifth appeal has been filed by the State, where it has been prayed that the conviction of Bharat Walia under Section 386 IPC is

inappropriate and he ought to have been convicted atleast under Section 364-A IPC (as charged) and sentenced to imprisonment for life. The other uncle Pawan Kumar PW-4 corroborated the testimony of Sunil Kumar and, despite strenuous cross- examination their testimony was not shaken.

8. During the prosecution evidence PW-5 Karan Pal, testified that on the fateful day at about 6.00 PM, he saw the deceased Mukul in the company of Ramesh Kumar, Hanuman and Jaspal @ Tenny opposite Gate No.3 of Kurukshetra University (it may be mentioned here that apart from the disclosure and recovery, this is the only evidence against accused Hanuman and Jaspal @ Tenny). There were a total number of 25 witnesses, but apart from PW-2 and PW-4 the testimony of the rest of them need not be referred, for the decision of the present appeals.

9. Learned counsel for the appellants, while emphasizing the testimony of PW-2 and PW-4, have pointed out that there are material discrepancies in their statements. Apart from that, on behalf of appellants Hanuman and Jaspal @ Tenny, the arguments raised are that there is no evidence against them, except the alleged disclosure statements. Besides, the testimony of PW-5 Karan Pal is highly incredible. It has been further argued on behalf of these appellants that the deceased Mukul talked to his cousin at 5.30 PM and informed him that he was at the mela ground and if this was so then he could not have been present half an hour later in front of Gate No.3 of the Kurukshetra University, because Kurukshetra is 45 kms from Yamunanagar and Gate No.3 is a further 5 km down. In the circumstances, further as per them, it is highly unlikely that PW-5 asked

Mukul what he was doing there and Mukul stated that he was roaming

around with his uncle.

10 Learned State counsel has sought to defend this testimony. To our mind the arguments of the learned counsel for the appellants Jaspal @ Tenny and Hanuman merit acceptance.

11. Learned State counsel is not in a position to deny the distance as pointed out by the counsel for the appellants. Though he has argued that there may be a difference of few minutes yet if Mukul was in the mela ground at 5.30 PM and even if he was kidnapped immediately thereafter, he could not have been present opposite Gate No.3 of the University before 6.45 PM. So it is not a difference of a few minutes but a difference of almost one hour. There is no reason for Mukul to have switched off his mobile phone or to have told the witness that he was roaming around with his uncle. After this evidence is discarded, the learned State counsel is not in a position to deny that the only other evidence against these two witnesses is their alleged disclosure statements. It may be mentioned here that though the trial Court noticed that pursuant to the disclosure statement of appellant Hanuman the phone of the deceased was recovered, yet the testimony of the witnesses does not reveal anything like that and only shows that one red coloured telephone was recovered.

12. In the circumstances, we are constrained to give benefit of doubt to Hanuman and Jaspal @ Tenny and consequently, acquit them of the charge. In case they are on bail their bail bonds be discharged and in case they are in custody, they be released forthwith.

13. Learned counsel for the appellants have argued that this is a case of blind murder and all the circumstances even if taken together do

not point towards the guilt of the appellants.

14. On the other hand, the learned State counsel has argued to the contrary.

15. In our considered opinion, the key determinant in this case is the credibility of PW-2 and PW-4, the two uncles of the deceased. We have been taken through their testimony and we reject the contention that they are discrepant in any material aspect. On the contrary they have given a cogent and credible account of what happened. They had no enmity with Ramesh Kumar or Bharat Walia because both of them were their neighbours. On the other hand they were trusting them. The money which they handed over, had been proved by bringing on record the withdrawals. Moreover Rs.11.00 lakh had been recovered from both of them (Rs.10.00 lakh from Ramesh Kumar and Rs.1.00 lakh from Bharat Walia). Once their testimony is believed, it shows that Ramesh Kumar and Bharat Walia had themselves stated that they knew the kidnappers. Despite the fact that money was handed over to them they neither came back to return the money nor got the child received. In view of this testimony, the chain against them is complete.

16. In the case in hand a teenage boy had been kidnapped leading to his murder, by none other than the persons residing in his neighborhood. The accused have, thus, betrayed the trust reposed by a common person in neighbor(s). The Supreme Court in **Vikram Singh and others Vs. State of Punjab, (2010)3 SCC 56**, while upholding the conviction of the accused therein and their death sentence, also upheld the finding of the High Court that the offence became more graver when it stood proved on record that the accused therein were none other than

the acquaintances of the teenage boy of 16 years, who was kidnapped and consequently murdered. The relevant extracts from the said judgment would read as under:-

“25. It was further observed that in determining the culpability of an accused and the final decision as to the nature of sentence, a balance sheet of the aggravating and mitigating circumstances vis-a-vis the accused had to be drawn up and in doing so the mitigating circumstances had to be given full weight so that all factors were considered before the "option is exercised". In Santosh Kumar's case (supra) this Court further expounded on the propriety and justification in awarding the death sentence. The broad principle that emerges from all the judgments is that in evaluating the category of the rarest of the rare, the facts of that particular case must be given pre-dominant consideration. As noted above, the High Court in the present matter while determining the various factors against the appellants has observed as under (verbatim reproduction) :

"In the instant case, from a careful reading of facts; minute analysis of evidence on records, and due consideration of rival submissions, we notice the following special reasons to hold that this case has acquired enormity (sic) of that kind which brings it in the rarest of rare category and for those reasons, we accept death reference and confirm death sentence :

1) This is a case that involves kidnapping of a school

going innocent boy for ransom and from discussion on motive, as above, it appears that the accused had raised a demand of Rs. 50,00,000/- from father of the deceased boy who was an established jeweler of Hoshiarpur;

2) This has come in evidence of father of the deceased, Ravi Verma (PW27), that accused Vikram Singh @ Vicky was known to his family and thus, under that acquaintance, accused Vikram Singh @ Vicky and Jasvir Singh committed kidnapping of the boy while betraying his trust in them;

3) That all three accused-appellant committed offence of murder in a pre-planned manner by using scientific methods and injecting fatal doses of chemicals in order to ensure that the offence was not detected and they were not fastened with criminal liability;

4) Right from pre-planning through death till recovery of dead body of the deceased, all three accused-appellants remained closely associated;

5) It appears that murder of the deceased was committed by administering chloroform and fortwin injections in heavy doses after tying his both hands and legs and putting a tape on his mouth. Chloroform which was used to make the boy unconscious is now not given as anesthetic drug to any patient and fortwin is administered only in moderate doses of 0.5 ml o 1

ml at a time after a gap of 8 hours. However, at the time of recovery of ampoules, each of 1 ml. quantity, all 5 ampoules were found to be empty. As such, the deceased was administered 5 ml. fortwin just within 24 hours apart from giving heavy doses of chloroform. Thus, soon after kidnapping, the deceased was reduced to a corpus with the help of chemicals and he was done to death in inhuman, diabolical and dastardly manner;

6) The deceased was the only son on his parents and incident of his kidnapping had sent a shock wave throughout the town of Hoshiarpur and in adjacent areas and further it also shocked the cumulative conscious of community causing hue and cry all over;

7) This is not a case of murder simplicitor but the accused persons have also been held guilty under Section [364A](#) Indian Penal Code which was brought in statute book in order to curb the menace of kidnapping for ransom and even independent of penal provisions of Section [302](#) Indian Penal Code, this Section also prescribes the punishment of death sentence in fit cases; and

8) This is not a case with even an iota of evidence to show enmity between parties, therefore, this is a case of cold blooded murder committed only in order to extract a heavy ransom of Rs. 50,00,000/- which is

evident from evidence of Ravi Verma (PW27) father of the deceased that every time, while calling on phones, the kidnapper gave him threats that if he wanted his son to be alive, he should immediately arrange for ransom amount of Rs. 50,00,000/-. It appears as the police became active, the accused could not extract the ransom and out of panic, poisoned the boy to death by administering heavy doses of chloroform and fortwin. However, as accused Vikram Singh @ Vicky was known to the family and the body had seen them, in all probabilities, the accused would not have spared his life in order to destroy evidence even in case of having received the ransom amount. Thus, from very beginning, the accused had kidnapped the boy for his elimination finally in either case (whether ransom amount was paid or not).

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29. This judgment can by no stretch of imagination advance the case of appellants before us. The balance sheet has been drawn up by the High Court. We adopt the same.

17. In the circumstances, the appeals filed by Bharat Walia and Ramesh Kumar bearing Nos. ***CRA-D-566-DB-2014*** and ***CRA-D-815-DB-2014*** are dismissed.

18. Coming to the appeal of the State bearing No. **CRA-AD-29-2016**, learned State counsel has argued that the role of Bharat Walia and Ramesh Kumar was identical. They both approached the complainant on 11.10.2011. They both went to Shamli on the first trip. Thereafter, also they were together in the entire episode. He has argued that the trial Court wrongly read the testimony of PW-2 and PW-4 to come to the conclusion that Bharat Walia came to the scene later on after the death of the child. As per him there being no distinction in the case of Ramesh Kumar and Bharat Walia, Bharat Walia should also have been convicted under Section 364-A IPC.

19. Learned counsel for appellant-Bharat Walia has argued that it was PW-2 and PW-4, who stated that the child had been killed by 'anda potash', administered by Ramesh Kumar when Hanuman and Jaspal @ Tenny were holding his body. The argument deserves to be rejected because as per the post mortem report, no poison was detected in the viscera. Moreover as per PW-2 and PW-4 (who were not the eye witnesses) this fact was told to them by the appellants thus, the same being hearsay, is inadmissible in evidence.

20. In the circumstances, we agree with the argument of the learned State counsel that the cases of Ramesh Kumar and Bharat Walia are identical. We consequently alter the conviction of accused Bharat Walia from Section 386 IPC to Section 364-A/34 IPC and enhance his punishment to life imprisonment. In terms of Section 386 Cr.P.C., before enhancing the sentence, the accused has to be provided with an opportunity of showing cause against such enhancement. As accused

Bharat Walia, is represented by his counsel Mr. Nand Lal Shammi in the

appeal filed by him (i.e. CRA-D-566-DB-2014- which is also being disposed of vide this very order) against the judgment of conviction and order of sentence, we deem it appropriate to hold that the accused has had sufficient opportunity to show cause against the enhancement of sentence and the said cause, has already been dealt with by us in the previous part of the judgment.

21. Consequently the appeal bearing **CRA-AD-29-2016** is allowed.

22. The appeals bearing No.**CRA-D-939-DB-2014 and CRA-D-697-DB-2014** are allowed and both the appellants are acquitted of the charges. Personal bonds/surety, if any, stands discharged.

23. Since the main cases have been decided, the pending CRM Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

06.09.2019
pooja sharma-I

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No