

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

1. CRA-D-843-DB-2008

Jagminder alias Jaggu

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-932-DB-2008

Manohar

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-29-DB-2009

Rakesh alias Mania

... Appellant

Versus

State of Haryana

... Respondent

**Reserved on : 04.03.2020
Date of decision : 06.03.2020**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.M.P.S. Mann, Advocate
for the appellant in CRA-D-843-DB-2008.

Mr. Ranvir S. Chauhan, Advocate
for the appellant in CRA-D-932-2008.

Mr.Anurag Jain, Advocate
for the appellant in CRA-D-29-DB-2009.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals have been instituted against the judgment dated 18.08.2008 and order dated 25.08.2008 rendered by the learned Additional Sessions Judge, Hisar, in Sessions case no.66 of 2005 whereby the appellants along with co-accused Ramphal were charged with and tried for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code (in short 'IPC') and Section 120-B IPC. The appellants along with co-accused Ramphal were convicted and sentenced as under:-

1	Under Section 302/34 IPC	Imprisonment for life and fine of Rs.3000/- to each convicts and in default of payment of fine, they shall further undergo R.I. for four months.
2	Under Section 201/34 IPC	Imprisonment for three years and fine of Rs.2000/- to each convicts and in default of payment of fine, they shall further undergo R.I. for three months.
3	Under Section 120-B IPC	Imprisonment for two years and fine of Rs.1000/- to each convicts and in default of payment of fine, they shall further undergo R.I. for 45 days.

All the sentences were ordered to run concurrently. Co-accused Ramphal had filed appeal (CRA-D-37-DB-2009). He died during the pendency of the appeal. Appeal qua him stood abated vide order dated 13.11.2013.

4. The case of the prosecution in a nutshell is that on 27.06.2005 at about 8.50 AM on receipt of a memo from Station Master Railway Station Hisar to the effect that a dead body of an unknown person was lying on the track of railway line in between Railway Station Dhansu and Raipur,

S/SHO Avtar Krishan, P.S. G.R.P. Hisar along with other police officials,

reached the spot. FSL team and dog squad were summoned. The spot was inspected by the FSL team. SI took into possession three-four samples of blood stained pieces of stones and grease stains present on the dead body and clothes. He tried to get the dead body identified but in vain. Inquest proceedings were completed. The dead body was sent to General Hospital, Hisar, for post-mortem examination on 28.06.2005. However, the dead body was referred to PGIMS, Rohtak. On that day, when the dead body was lying in the mortuary of General Hospital, Hisar, Kamal and Wazir identified the dead body to be of Ramesh son of Ram Kumar. On 01.07.2005 Wazir son of Ami Chand reached Police Station GRP Hisar. He submitted an application. He stated that he is Chamar by caste. About six months prior to the occurrence, one Mukesh alias Lila son of Jatlal sustained injury. He died in a quarrel between their community and Dhanak community. Raghbir, Mohan, Balwant and Banarsi were facing trial in that murder case. Since then, members of Dhanak community had grudge against their community. On 26.06.2005 at noon, Manohar alias Bobby son of Nabhu Ram under the influence of liquor was telling Dablu son of Nanu Ram that they could not do anything despite the fact that their girl had been kidnapped and a boy had been murdered. At that time, the complainant was standing in the street where Rajesh was present at his shop. Ramesh was also present at the shop of Rajesh. Thereafter, on 28.06.2005 Rajesh son of Dalipa Dhanak told Suresh Khati that Ramesh alias Kanu was lying dead on the railway track and their family had no knowledge about this. Suresh Khati narrated this fact to the complainant. Thereafter, the complainant and his family members went to the Civil Hospital, Hisar. The dead body was brought to the house

on 29.06.2005. The family was under shock. An FIR was registered on 01.07.2005. Investigation was completed. Challan was presented after completing all the codal formalities.

5. Prosecution examined a number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They had denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence, these appeals.

6. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

7. Learned counsel appearing on behalf of the State has supported the prosecution case.

8. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

9. PW-1 Wazir deposed that the deceased was his cousin. On 26.06.2005, he was standing in front of his house at about 11/12.00 A.M. Kamal, Bobby alias Manohar and Rajesh were also standing in front of shop of Rajesh. Dablu son of Nanu Ram was crossing the street. Accused Manohar told Dablu that a girl from his family had been kidnapped and even his man had been killed. He was incapable to do anything. Only they could take revenge. Earlier also a fight had taken place between Dhanak and Chamar communities. In that fight, Lila was murdered. After two days, Rajesh son of Dalip Dhanak had disclosed to Suresh Khati that Ramesh had been murdered and his dead body was put on railway track. This fact was not in the notice of family members of Ramesh. Suresh Khati disclosed this

fact to him. He along with Kamal and other family members went to Civil Hospital. The dead body was identified by him and his brother. The dead body was handed over to them. They told the police that they were not in a position to tell anything at that stage. They would inform the police after thinking over it. On 01.07.2005, an application was given at Railway Station, Police. He thumb marked application Ex.P1. He along with Kamal went to Railway Police Station, Hisar on 11.07.2005. Police had arrested three accused persons namely Jaggu son of Satbir, Munia son of Sant Ram and Ramphal son of Tek Ram. Police interrogated them. Jaggu made a disclosure statement to the effect that he along with his co-accused Ramphal and Munia had taken Ramesh alias Kanu towards Railway Station near the brick kiln of Sattu on 26.06.2005 on the pretext of bringing a girl. At about 12.00 noon he had concealed one sword in the bushes near the railway lines. When they took Kanu, he was under the influence of liquor. He and Ramphal put the electric wire around the neck of Ramesh alias Kanu. Munia caught hold of his neck. He put brick bat under the neck of Ramesh alias Kanu. He brought out the sword from the bushes. He chopped off the neck of Ramesh alias Kanu with the sword. The dead body of Ramesh was picked up by them and placed on railway track. He threw the sword in the pond. The disclosure statement is Ex.P2. Thereafter, the police interrogated Ramphal. He also disclosed that on 26.06.2005, he along with Jaggu and Munia alia Rakesh had taken Ramesh alias Kannu towards railway line after planning on the pretext that they had brought a girl. Jaggu had concealed a sword near the railway line in the bushes. Jaggu had taken an electric wire along with him. He and Jaggu put an electric wire around in the neck of

Ramesh. He was made unconscious. Munia caught hold Ramesh by his head. A piece of brick was kept under the neck of Ramesh. Jaggu brought out the concealed sword from the bushes. Thereafter, the body was placed on the railway track. The disclosure statement of Ramphal is Ex.P3. Then the police interrogated accused Munia alias Rakesh. The disclosure statement of accused Munia alias Rakesh is Ex.P4. According to him, on 26.06.2005 on asking of Jaggu, they made a plan. Then all three of them, i.e. he, Jaggu and Ramphal had taken Ramesh alias Kanu towards railway line on the pretext that they had brought a girl there. Jaggu had concealed a sword in the bushes near the railway line. Ramphal and Jaggu put the electric wire around the neck of Ramesh. Jaggu brought out the concealed sword. The body was placed on the railway track. Jaggu had produced one t-shirt from his house. The accused were Dhanak by caste. He admitted that on 26.06.2005, Manohar alias Bobby did not make any remarks against him, nor there was talk between him and Manohar. Manohar alias Bobby did not say anything to him. But he said to Dablu that they would take revenge. However, he did not disclose this fact to anyone in the village. Rajesh Jangra was a carpenter. He was also a witness in this case but he was given up by the prosecution being won over by the accused.

10. PW-2 Dr.Ajay Kumar deposed that he received a telephonic message of SHO GRP, Hisar. He visited and inspected the spot. He prepared his report Ex.P12. In his cross-examination, he admitted that there was some black greasy material present on the mouth and on the right hand of deceased and the possibility of injuries in a railway accident could not be ruled out.

11. PW-4 Balbir deposed that on 27.06.2005 he was on duty. Gangmate Raghunath had sent him to guard the dead body lying at 71 km. The lower portion of dead body was lying in between the track and head was lying by the side of track. Nobody was present on the spot. The dead body was taken into possession by the police.

12. PW-5 Raj Kumar had prepared the site plan.

13. PW-7 Kamal deposed that they were three brothers. Deceased Ramesh was his real brother. Ramesh used to keep a camel cart for bringing and selling fodder on it. A quarrel had taken place between the dhanak and chamar communities. One Lila had died in that incident. On 26.06.2005, accused Manohar said to Dablu that they had killed their son and their girl had been abducted but he could not do anything. They would take revenge. These words were spoken by Manohar alias Bobby at the shop of Rajesh where his brother Ramesh alias Kanu was also present. He and his brother Wazir were also present there. At about 3.00/4.00 PM on 26.06.2005 Satbir father of accused Jaggu had taken his brother Ramesh along with his camel cart to his dhani. Lateron, on that day he went to dhani of Satbir to bring his money from him. His brother Ramesh had come back at 7.00 P.M. on 26.06.2005. He stayed at home for 15/20 minutes and went away. On 28.06.2005 Rajesh told Suresh Khati that his brother Ramesh was lying dead in the railway track but his family was not aware of this fact. Suresh Khati informed his brother Wazir. Wazir informed them. His brother Wazir went to railway track but his dead body was not found there. Thereafter, they had gone to Civil Hospital, Hisar. The dead body was identified by them. The post-mortem examination was conducted on 29.06.2005 at PGI

MS, Rohtak. On 01.07.2005, he along with his brother Wazir went to the police station. An application was moved. They went to the police station GRP, Hisar, on 11.07.2005. Accused Jaggu, Ramphal and Munia alias Rakesh made disclosure statements. The disclosure statements are Ex.P2, P3 and P4 respectively. In his cross-examination, he admitted that he had not narrated to the police on 28.06.2005 in his statement Ex.D1 that he and Wazir on 26.06.2005 were present in the street near the shop of Rajesh where Manohar alias Bobby asked Dablu son of Nanu Ram regarding the murder of their family member and abduction of their girl. He also did not narrate on 28.06.2005 in his statement Ex.D1 before the police that they came to know through Suresh Khatri about the dead body of his brother Ramesh lying at the railway track. He had also not disclosed in his statement Ex.D1 to the police on 28.06.2005 that he had gone to Dhani of Jaggu where his brother Ramesh was present.

14. PW-11 Avtar Krishan deposed that he was posted as SHO, P.S. GRP Hisar on 27.06.2005. A memo Ex.P34 was received at 8.50 A.M. He went to the spot. FSL team was summoned. He obtained finger prints from the dead body. Dog squad was pressed into service. Dead body was sent for post-mortem examination after inquest proceedings.

15. PW-14 HC Harpal Singh deposed that he went to the spot. FSL team reached at the spot. The dead body was taken to General Hospital, Hisar. In the hospital, three persons Hari Om, Wazir and Kamal came from village Mirjapur. They identified the dead body. Accused Jagminder alias Jaggu, Rakesh alias Munia and Ramphal made disclosure statements Ex.P2, P3 and P4 respectively.

16. PW-15 Ram Kishan deposed that he was posted as SI/SHO PS GRP Hisar. On 01.07.2005 at about 8.15 PM, Wazir gave application Ex.P1. He recorded statements of witnesses on 03.07.2005. He went to the house of Jagminder alias Jaggu, Ramphal and Rakesh alias Munia. He interrogated accused Jaggu alias Jagminder on 11.07.2005 as well as Rakesh and Ramphal. On 13.07.2005 accused led them to village pond for recovery of sword. They tried to recover the sword from the pond but could not recover. In his cross-examination, he deposed that Wazir and Kamal came to him at about 8.15 PM on 01.07.2005 in the police station. Sube Singh resident of village Devsar had produced accused Jagminder alias Jaggu, Ramphal and Rakesh alias Munia at about 3.30 PM in P.S. GRP Hisar on 11.07.2005. He did not record the statement of Sube Singh.

17. PW-18 Rajesh Jangra deposed that he was running a kiriyana shop at village Mirjapur. He did not know anything about this case. Nothing happened in his presence. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied making of statement Ex.P58. In his cross-examination by the learned Public Prosecutor, he deposed that on 26.06.2005 he was present at his house. He did not open his shop in village Mirjapur in the morning on 26.06.2005. He stated before the police that on 26.06.2005 he had opened his shop at village Mirjapur in the morning. He made this statement under the pressure of police. He did not state before the police that Jagminder and Ramesh consumed liquor at his shop. He was confronted with portion of B to B of statement Ex.P58 where it was so recorded. He did not state before the police that in the evening at about 6.00 PM Ramesh, Manohar, Ramphal, Rakesh alias Munia and Jagminder came

to his shop and purchased a bottle of liquor from him and consumed the liquor at his shop. He was confronted with portion C to C of Ex.P58, wherein it was so recorded. He did not state to the police that all the four persons were talking with each other. He was confronted with portion D to D of Ex.P58 wherein it was so recorded. He did not state before the police that after consuming liquor at about 7.00/8.00 PM, all the five Ramesh, Manohar, Rakesh, Ramphal and Jaggu went towards the bus stand and railway crossing. He was confronted with portion E to E of Ex.P58 wherein it was so recorded. He did not state before the police that on 28.06.2005 he came to know that Ramesh alias Kanu had been murdered during the night of 26/27.06.2005 and after that Manohar alias Bobby was giving a lalkara at a public place that he had completed the work. He was confronted with portion F to F of Ex.P58 wherein it was so recorded.

18. PW-19 Dr.Luv Kumar Sharma conducted the post-mortem examination. The injuries mentioned in the report were ante mortem in nature. Probable time that elapsed between death and post-mortem examination was between 2 to 3 days. In his cross-examination, he deposed that there were both clean cut and lacerated margins over the neck and upper trunk with tags of skin present at places. This indicated both use of heavy sharp weapon over the area along with run over by the wheels of the train. All the injuries, i.e. injury no.1 except clean cut and injury no.2, 3 & 4 were consistent with run over by the train.

19. The case of the prosecution is that on 26.06.2005 at about 11/12.00 AM, Kamal, Manohar alias Bobby and Rajesh were standing in front of shop of Rajesh. Dablu was crossing the street. Manohar told Dablu

that their young girl had been kidnapped and even their man had been killed. They were incapable of doing anything. After two days, Rajesh son of Dalip Dhanak told to Suresh Khati that Ramesh had been murdered and his dead body was put on a railway track. Suresh Khati disclosed this fact to PW-1 Wazir. Thereafter, he disclosed to his family members. The prosecution has neither examined Rajesh son of Dalip Dhanak nor Suresh Khati being won over by the accused. Deceased Ramesh had disappeared on 26.06.2005. FIR was registered on 01.07.2005 that also too late in the evening.

20. PW-1 Wazir had gone to the hospital on 28.06.2005. The body was handed over to him. According to him, accused Jaggu, Munia and Ramphal made disclosure statements. He has categorically admitted in his cross-examination that he had not told anything about the remarks made by Manohar to Dablu. PW-1 Wazir in his examination-in-chief has admitted that they told the police that they were not in position to say anything and they would inform the police after thinking over it.

21. There is an inordinate delay in lodging the FIR which has not been explained satisfactorily by the prosecution.

22. PW-7 Kamal deposed that Manohar told Dablu that they had killed their son and their girl had been abducted but they could not do anything and they would take revenge. These words were spoken by Manohar at the shop of Rajesh where his brother Ramesh alias Kanu was also present. His brother Wazir was also present. At about 3.00/4.00 PM on 26.06.2005, Satbir father of accused Jaggu had taken his brother Ramesh along with his camel cart for loading fodder. Ramesh came back at 7.00 PM

on 26.06.2005. On 28.06.2005 Rajesh told Suresh Khati that Ramesh was lying dead at railway track and his family members were not aware of it. Suresh Khati told about this incident to his family members. The post-mortem was conducted on 29.06.2005. On the next day, all the family members sat together and satisfied themselves that murder of Ramesh was committed by the appellants. He categorically admitted that police has recorded his statement on 28.06.2005 at Civil Hospital, Hisar at about 2.00 PM. He did not narrate to the police on 28.06.2005 in his statement Ex.D1 that he and Wazir on 26.06.2005 were present in the street near the shop of Rajesh where Manohar alias Bobby asked Dablu son of Nanu Ram regarding the murder of their family member and abduction of their girl. He did not narrate on 28.06.2005 in his statement Ex.D1 before the police that they came to know about the dead body of his brother Ramesh lying at the railway track through Suresh Khati. He had not stated to the police in his statement Ex.D1 on 28.06.2005 that he had gone to Dhani of Jaggu where his brother Ramesh was present. Ex.D1 was recorded along with inquest report.

23. According to the prosecution case, accused Jagminder alias Jaggu, Ramphal and Rakesh alias Munia were produced by one Sube Singh before the investigating officer PW-15 Ram Kishan. However, the fact of the matter is that neither Sube Singh was examined nor his statement was recorded. The weapon of offence, i.e. sword was not recovered by the police. The prosecution has placed reliance upon statement of PW-18 Rajesh Jangra to the effect that he had seen the deceased in the company of accused on 26.06.2005 in the evening. He was declared hostile and was

cross-examined by the learned Public Prosecutor. According to him, he had made statement under the pressure of police. He was confronted with portions of statement Ex.P58 but he denied the contents of the same.

24. We have already noticed that there is an inordinate delay in registration of FIR. Sube Singh has not been examined by the prosecution nor his statement under Section 161 Cr.P.C. was recorded. The major improvements have been made by PW-7 Kamal in his statement. According to PW-1 Wazir, proclamation was made by Manohar before Dablu but he had not disclosed this fact to anyone.

25. According to FSL report Ex.P12, no blood was detected on the railway line near the dead body. However, bloodstains were also observed out side the track at a distance of approximately 2-3 feet. Ethyl alcohol was detected as per Ex.P61. No common poison could be detected in exhibit 4d. Exhibit-1 (stone pieces), exhibit -3a (t-shirt), exhibit-3b (pants), exhibit -3c (Chappal) were stained with blood stains. Blood was detected in exhibit -2 (blood stained earth). Blood could not be detected in exhibit-5 (blood stained earth), exhibit-7 (blood stained earth), on exhibit-6 (brick) and exhibit-8 (t-shirt), as per FSL report Ex.P62. The prosecution has also failed to prove the motive.

26. The prosecution has placed strong reliance upon disclosure statements made under Section 27 of the Indian Evidence Act, 1872. The statements are inadmissible in evidence since made before the police officer in custody. Surprisingly in this case, the learned trial Court has placed reliance on the statement Ex.P58 made by Rajesh Jangra. It is settled law that statement made under Section 161 Cr.P.C. could not be taken as a

ground for conviction. The statement can only be used to prove the contradictions/omissions.

27. Their Lordship of Hon'ble Supreme Court in ***Criminal Appeal no.374 of 2020*** titled ***Parvat Singh & others vs. State of Madhya Pradesh***, decided on 02.03.2020 have held as per the settled preposition of law a statement recorded under Section 161 Cr.P.C. is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 Cr.P.C. can be used only to prove contradictions and / or omissions. Their Lordships have held as under:-

“14.1 It is required to be noted that it was a black night (Amavasya) at the time of incident. It was a dark night as the incident has happened between 4-5 a.m. PW8 in her statement recorded under Section 161 Cr.P.C. has stated that she has seen all the accused in the light of the torch. She has stated that Bal Kishan – original accused no.1 was having an axe and other four were armed with lathis. She had also stated in her statement under Section 161 Cr.P.C. that Bal Kishan – original accused no.1 gave the axe blow on the neck of the deceased due to the enmity and earlier dispute and other accused were telling to run away immediately and thereafter all the five accused ran away from behind the cattle shed/house. She stated that she had identified all the accused in the light of the torch and also by voice. According to her after she shouted, other persons came. However, there is material improvement in her deposition before the Court. In her deposition, she has stated that accused Santosh and Rakesh caught hold of Bal Kishan – deceased. In her deposition, she has also stated that there was a

chimney light in the cattle shed. She has also stated in her deposition that the accused ran away from the nearby agricultural field of sugarcane. Therefore, the deposition of PW8 is full of material contradictions and improvements so far as original accused Nos. 2 to 5 is concerned. It is required to be noted that no other independent witness even named by PW8 has supported the case of the prosecution. Though, according to PW8, she identified the accused in the light of the torch, there is no recovery of torch. There is material improvement so far as the chimney light is concerned. In her deposition, she has not stated anything that the appellants – original accused nos. 2 to 5 were having the lathis, though she has stated this in her statement under Section 161 Cr.P.C. The High Court has observed relying upon her statement recorded under Section 161 Cr.P.C. that the appellants herein – accused nos. 2 to 5 were having lathis. However, as per the settled preposition of law a statement recorded under Section 161 Cr.P.C. is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 Cr.P.C. can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW8 recorded under Section 161 Cr.P.C. while observing that the appellants were having the lathis.”

28. In the present case, chain of events is not complete. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

29. Accordingly, the appeals are allowed. The judgment dated 18.08.2008 and order dated 25.08.2008 are set aside. The appellants are

acquitted of the charges framed against them. The appellants are on bail.
Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 06, 2020.
Davinder Kumar

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