

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

(1) CRA-D-438-DB of 2004

Ram Parshad and another

.... Appellants

Versus

State of Punjab

..... Respondent

(2) CRA-D-784-DB of 2005

Krishna

.... Appellant

Versus

State of Punjab

..... Respondent

Reserved on : 20.01.2020

Date of decision : 22.01.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. J.S. Mehndiratta, Advocate, Legal Aid Counsel,
for the appellants.

Mr. H.S. Grewal, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these
appeals, i.e. CRA-D-438-DB of 2004 and CRA-D-784-DB of 2005,

therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment and order dated 09.12.2003, rendered by learned Additional Sessions Judge, Ludhiana. Appellants Ram Parshad, Vinod Kumar and Krishna were charged with and tried for the offences punishable under Sections 302/364/201/34 IPC. Appellant Ram Parshad was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 2,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 201 IPC. Appellants Vinod and Krishna were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 302 read with Section 34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹ 2,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 201 IPC. All the sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that Sat Pal (PW.1) got his statement recorded on 30.11.1999. According to the averments made in the complaint, they were two brothers. His elder brother Inder Pal alias Raju was residing in Ludhiana for the last about 15 years. Inder Pal alias

Raju was owner of a three wheeler. Inder Pal alias Raju was residing as a tenant in the house of Ram Parshad in a room at Bhattian Colony, Ludhiana, for the last about 11 months. On 20.11.1999 at about 11.00 AM, he along with Mathura Parshad went to meet Inder Pal. Ram Parshad, his wife Krishna and his son Vinod Kumar met him. He talked with them about the marriage of Savita with Inder Pal. They told him that they were going to their relative to talk about this and they would tell their decision in the evening. In his presence and in the presence of Mathura Parshad, his brother Inder Pal was taken by Krishna and Vinod Kumar in three wheeler of his brother. Ram Parshad drove the three wheeler. On the next day, he along with Mathura Parshad again went to the house of Ram Parshad to know about the decision of marriage. Ram Parshad, Krishna and Vinod accepted the proposal. The complainant enquired about his brother Inder Pal. However, they could not reply satisfactorily. The three wheeler of his brother was also not there. The room of his brother was lying locked. He suspected that his brother Inder Pal was kidnapped by Ram Parshad, Krishna and Vinod on 20.11.1999 with intention to kill him. Neither his brother nor his three wheeler was traceable. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

6. Learned counsel appearing on behalf of the appellants has

vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the trial court.

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

8. PW.1 Sat Pal testified that he was an auto rickshaw driver. He had one brother Inder Pal, who was residing at Ludhiana for the last about 15-16 years. He used to ply an auto rickshaw in Ludhiana. He was murdered about 10/11 months back. About one year prior to his death, he had been residing in Salem Tabri, Ludhiana, on Jalandhar by-pass road. At the time of his death, he used to reside at the house of the accused in Bhattian Colony, Ludhiana. His brother Inder Pal had intimate relations with the accused and also used to give his earnings to the accused. He did not know whether there was any talk about the marriage of Inder Pal with Savita daughter of Ram Parshad accused. He had gone to the house of the accused to see his brother Inder Pal. At that time, Mathura Parshad was also with him. Inder Pal was not present in the house at that time. Accused Ram Parshad and his wife Krishna were present in the house. He enquired from them about his brother Inder Pal. They did not tell him any thing about the whereabouts of his brother. He and Mathura Parshad came back. A few days thereafter, he came to know that his brother Inder Pal had been murdered. He met the police near Jalandhar by-pass. His statement Ex.PA was recorded. Accused Ram Parshad was arrested. During interrogation, he made disclosure statement Ex.PB to the effect that he had kept concealed the dead body of Inder Pal in the courtyard of his house buried under the earth. Accused Ram Parshad

offered to get the same recovered. Thereafter, accused led the police party and got recovered the dead body of Inder Pal from the disclosed place. He identified the dead body. Inquest report was prepared. Disclosure statement Ex.PE was also made by accused Vinod Kumar. He got recovered the auto rickshaw of Inder Pal from the side of Machhiwara. In his presence, accused Vinod Kumar was interrogated by the police on 03.12.1999. He told the police that he had kept concealed one hammer, one *Durmat* and one iron rod. Accused Vinod Kumar then led the police party to the disclosed place and got recovered hammer (Ex.P-2), *Durmat* (Ex.P-1) and iron rod (Ex.P-3). These were taken into possession. In his cross-examination, he deposed that the police party along with him and Mathura Parshad and accused Ram Parshad had gone to the house of Ram Parshad at about 3.00 PM. Many persons had gathered there at that time. Police stayed at the house of Ram Parshad for about 3-4 hours. Dead body of Inder Pal was found lying in a room of the house of accused Ram Parshad, which had no roof. The room without roof was on the back side of the house.

9. PW.3 Kewal Singh had taken the photographs of the dead body on the spot. The photographs are Ex.PW.3/1 to Ex.PW.3/18. In his cross-examination, he deposed that he had reached the spot at 1.00 noon.

10. PW.4 Dr. U.S. Sooch along with Dr. Harjap Singh and Dr. Charanjit Singh had conducted the post mortem examination on the body of Inder Pal alias Raju on 02.12.1999 at 2.30 PM. They noticed following injuries on the body of the deceased :-

- (1) Post mortem burns all over the dead body with singeing of hair of scalp and body. The burns were more deep on the back of the chest and abdomen. The left posterior wall of

the abdomen was completely burnt and loops of intestines were lying out side the abdominal wall which was also burnt. The skin of the hands was burnt. Black soot was present on the body.

- (2) Wound 2" x 1" x bone deep on the left occipital parietal area.
- (3) Wound 1 ¾" x ¾" x bone deep on the occipital area.
- (4) Wound 3" x 1" x bone deep on the right of occipital parietal area.

On exploration of injuries No.2, 3 and 4, both occipital and both parietal bones were fractured and depressed. Brain matter was liquified and blackish mass extra dural under injuries No.2, 3 and 4 was present.

- (5) Contusion 4" x 5" on the left iliac fossa.
- (6) Contusion 6" x 4" on the back of left elbow.
- (7) Contusion 7" x 5" front of the left thigh.
- (8) Contusion 4" x 2" front of both knee.
- (9) Contusion 10" x 5" antero medial aspect of the right leg.
- (10) Contusion 8" x 3" on the back of left calf.
- (11) Contusion 4" x 3" on the right renal area.
- (12) Contusion 4" x 3" front of the left shoulder.

The cause of death in this case was result of head injury which was ante mortem and was sufficient to cause death in the ordinary course of nature. Injury No.1 was burn injury, which was post mortem in nature. Rest of the injuries were ante mortem in nature. Probable time between injuries and death was within six hours. Time between death and post mortem examination was about two weeks. He proved the post mortem report Ex.PF.

11. PW.8 Ami Singh deposed that he was President of Mohalla Ashok Nagar, Ludhiana. He identified all the three accused in the court.

According to him, they came to his house on 01.12.1999 at about 5.00 AM. They jointly stated before him that they had killed Inder Pal alias Raju. They told him that Inder Pal alias Raju had illicit relations with their daughter. For that reason, they had killed Inder Pal alias Raju. The accused told him that they had killed Inder Pal alias Raju by inflicting injuries with hammer, *Durmat* and iron rod. They did not disclose the particular weapon used by each of them. They did not tell him anything else. Firstly, accused Ram Parshad disclosed to him that they had killed Inder Pal alias Raju with hammer, *Durmat* and iron rod. Accused Ram Parshad told him that before inflicting injuries to Inder Pal alias Raju, he was administered liquor. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he deposed that he had made statement before the police in respect of disclosure made by the accused to him. Ram Parshad led the police party to the disclosed place and after opening the lock of main gate, he got recovered the dead body from a room without roof after clearing the bricks with a *gainty*. In his cross-examination by the learned defence counsel, he deposed that he was President of the registered Mohalla Society. It was registered about 30-32 years ago. He was continuing as President of the Society for the last 30-32 years. No election for the office of President of the Society was held. He was made President till life of the Society. The house of the accused was at a distance of half a mile from his house. The accused lived in a separate Mohalla. There was Sarpanch, Lambardar and Member Panchayats in the said Mohalla. He was not related to any of the accused. Accused were also not friendly to him. Accused were not on

visiting terms with him. He along with police and accused had reached the house of the accused at 5.00 PM. The main door of the house of the accused was closed, when they reached there. However, it was not locked. The rooms of the house of the accused at that time were lying open.

12. PW.9 Saiku testified that he was working as labourer in the Dairy of Bhupinder Singh for the last 18 years. Inder Pal deceased was brother of his wife. He used to reside on the back side of Amaltass Hotel in Bhattian Colony. On 20.11.1999, he had gone to meet Inder Pal. He had gone to talk about the marriage of Inder Pal with Savita. All the accused were present in the house of Ram Parshad accused. When he talked about the marriage of Inder Pal with Savita, all the accused started beating Inder Pal. He intervened and rescued Inder Pal. He took Inder Pal to his room. All the accused told him that they would finally decide the issue of marriage of Inder Pal with Savita by evening. On 21.11.1999, he went to his village Sukhanpur in U.P. His statement was recorded by the police. In his cross-examination, he deposed that he came to know about the death of Inder Pal after about 20-25 days of his death. He did not inform the police about the beatings given to Inder Pal by the accused. He did not inform even relatives at Ludhiana, when he came to Ludhiana after about 20-25 days of the death of Inder Pal.

13. PW.10 (wrongly mentioned as PW.9) Mohinder Pal testified that he was posted as Assistant Commissioner (Grievances), Ludhiana, on 01.12.1999. ASI Ranjit Singh of Police Station Salem Tabri, Ludhiana, came to him. He requested that one dead body was lying buried, which was to be extracted. He accompanied him. They went in the area of village

Bhattian. He did not remember about any important hotel nearby the site. Accused Ram Parshad was in custody at that time. Accused Ram Parshad took them to his house and opened the gate. Accused Ram Parshad entered the house in the courtyard. A pit was dug in the earth, which was open. Accused Ram Parshad took a spade and started digging one side of the courtyard, which was *kacha*. After digging, a dead body was found in the pit, which was partly burnt from lower side. Younger brother of the deceased identified the dead body and told that it was of Inderjit. In his cross-examination, he deposed that the house was lying locked when they reached the spot. Accused Ram Parshad opened the lock in his presence. However, he could not say from where Ram Parshad took the key. They stayed at the spot for about 1/1 ¼ hours. He started from the spot at about 5.00 PM or 6.00 PM and came to his house.

14. PW.11 SI Paramjit Singh deposed that he recorded the statement Ex.PA of Sat Pal on 30.11.1999, on the basis of which FIR Ex.PA/2 was recorded. Accused were arrested. The disclosure statement of accused Ram Parshad was recorded. ASI Ranjit Singh was sent to the office of the Deputy Commissioner, Ludhiana, with a request to depute some Executive Magistrate to witness the recovery of the dead body of Inder Pal. Mohinder Pal, PCS, Executive Magistrate, Ludhiana, joined the police party. Accused then led the police party to the disclosed place and got recovered the dead body of Inder Pal alias Raju from the wall of the basement of his room, which was without roof and which was constructed in the courtyard of the house. The body was sent for post mortem examination. The recovery of hammer, *Durmat* and iron rod was made.

Three wheeler was also taken into possession. In his cross-examination, he deposed that the Executive Magistrate met them at about 3.00 PM. They started from Jalandhar bye-pass at about 1.00 PM towards the place where the dead body was stated to be lying. He recorded the statement of the Executive Magistrate. The Executive Magistrate remained at the spot for about 2 ½ /3 hours. They reached the place of recovery at about 3.55 PM after arrival of the Executive Magistrate. He did not remember the thickness of the wall, from which the body was recovered. The height of the wall was about 8/8 ½ feet. It took about 45 minutes/an hour to extract the body from the wall. In Ex.DD, he had not written that the accused were produced by Ami Singh.

15. According to the contents of the FIR Ex.PA/2, PW.1 Sat Pal along with Mathura Parshad had gone to see his brother Inder Pal on 20.11.1999 at 10.00 AM. Appellants Ram Parshad, his wife Krishna and their son Vinod were present there. He had talk with them about the marriage of Inder Pal and Savita. They told him that they would discuss the matter of marriage of Inder Pal and Savita with their relatives and tell him about the decision. In his presence and in the presence of Mathura Parshad, appellants Krishna and Vinod made Inder Pal to sit on the back seat of three wheeler No. PIM-6643. It was owned by his brother Inder Pal. Then appellant Ram Parshad went away with the said three-wheeler. On the next day, he and Mathura Parshad again went to the house of Ram Parshad to enquire about the proposed marriage. The appellants met them there. He talked about the relationship and also enquired about his brother. They did not give any satisfactory reply. He found that room of his brother was

locked. He had searched for his brother. He had suspicion that his brother Inder Pal had been abducted on 20.11.1999 by the appellants with an intention to kill him. However, when he appeared in the court as PW.1, he only deposed that he had gone to the house of the appellants to see his brother Inder Pal. At that time, Mathura Parshad was also with him. Inder Pal was not present in the house. At that time, appellant Ram Parshad and his wife Krishna were present in the house. He enquired from them about his brother Inder Pal. They did not tell him about the whereabouts of his brother. They told that he had gone out of Ludhiana. Later on, he came to know that his brother Inder Pal was murdered. Thus, there is variance in the statement Ex.PA, on the basis of which FIR Ex.PA/2 was recorded, and the statement made by Sat Pal in the court as PW.1.

16. The case of the prosecution is that the appellants murdered Inder Pal and buried the dead body. According to the police, appellant Ram Parshad had made a disclosure statement that he had kept concealed the dead body of Inder Pal in the room, which was without roof and had basement. The dead body was concealed in the wall of the basement of that room. He had also disclosed that he had burnt the dead body and then covered the body with bricks and cement. He made disclosure statement Ex.PB. Thereafter, PW.11 SI Paramjit Singh had sent ASI Ranjit Singh to the office of the Deputy Commissioner, Ludhiana, with a request to depute some Executive Magistrate to witness the recovery of the dead body of Inder Pal. Mohinder Pal, Executive Magistrate, Ludhiana, joined the police party. Appellant Ram Parshad then led the police party to the disclosed place and got recovered the dead body of Inder Pal alias Raju from the wall

of the basement of his room, which was without roof and which was constructed in the courtyard of the house. The body was decomposed. PW.1 Sat Pal identified the body. In his cross-examination, he deposed that they reached the place of recovery at about 3.55 PM after arrival of the Executive Magistrate. He did not remember the thickness of the wall, from which the body was recovered. The height of the wall was about 8/8 ½ feet. It took about 45 minutes/an hour to extract the body from the wall. However, PW.10 (wrongly mentioned as PW.9) Mohinder Pal deposed that appellant Ram Parshad took them to his house and opened the gate. Appellant Ram Parshad entered the house in the courtyard. A pit was dug in the earth, which was open. Ram Parshad took a spade and started digging one side of the courtyard, which was *kacha*. After digging, a dead body was found in the pit, which was partly burnt from lower side. The dead body was identified by younger brother of the deceased. In his cross-examination, he deposed that he did not remember whether any application was marked to him by the District Magistrate or SDM asking him to go to the spot with the police. The house was lying locked when they reached the spot. Appellant Ram Parshad opened the lock in his presence. However, he could not say from where he took the key.

17. PW.8 Ami Singh deposed that appellant Ram Parshad got the dead body recovered from a room without roof after clearing the bricks with a *gainty*. In his cross-examination, he deposed that he along with police and the accused had reached the house of the accused at 5.00 PM. He further deposed that the main door of the house of the accused was closed, when they reached there. However, it was not locked. The rooms of the house of

the accused at that time were lying open. However, PW.10 (wrongly mentioned as PW.9) Mohinder Pal deposed that the door was locked and appellant Ram Parshad had opened it with the key.

18. PW.3 Kewal Singh had taken the photographs of the dead body. According to him, he reached the spot at 1.00 noon and reached the police station at 4.00 PM.

19. Thus, according to PW.1 Sat Pal, the dead body was taken out by appellant Ram Parshad from the room. PW.8 Ami Singh stated that it was taken out from a room without roof, after clearing the bricks. PW.10 (wrongly mentioned as PW.9) Mohinder Pal stated that appellant Ram Parshad took a spade and started digging one side of the courtyard which was *kacha*. After digging, the dead body was found in the pit. PW.11 SI Paramjit Singh, who is the Investigating Officer, has deposed that the dead body was recovered from the wall of the room, which was without roof and had basement. The height of the wall was about 8/8 ½ feet. It took about 45 minutes/an hour to extract the body from the wall. The recovery memo of the dead body is Ex.PC. According to it, appellant Ram Parshad went to his house and had broken the wall on the eastern side of his room and got recovered the dead body of Inder Pal alias Raju. This recovery memo was also signed by Mathura Parshad and PW.8 Ami Singh. Hence, a doubt is created whether the dead body was recovered from the wall or from the floor of the house.

20. The case of the prosecution is also that the appellants had made extra judicial confession before PW.8 Ami Singh. PW.8 Ami Singh proclaims himself to be President of Mohalla Society. He was not a man of

authority. The appellants were not residing in the locality where he was living. He has admitted that in the village of the appellants, Sarpanch, Lambardar and Member Panchayats were residing. In his cross-examination, he admitted that he had never visited the house of the appellants before the occurrence. He was not related to any of the appellants. The appellants were also not friendly to him. They were not on visiting terms with him. The extra judicial confession is ordinarily made before a man of authority, not before a person with whom the accused had no acquaintance.

21. The statement made by PW.9 Saiku also does not inspire any confidence. In case, he had seen Inder Pal being beaten by the appellants on 20.11.1999, he would have told this fact to his sister or to PW.1 Sat Pal immediately.

22. Accordingly, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Both the appeals are allowed. The judgment and order dated 09.12.2003 are set aside. Appellants Ram Parshad, Vinod Kumar and Krishna are acquitted of the charges framed against them by giving them benefit of doubt. They are already on bail. Their bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

January 22, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

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