

CRA-103-DB-2010

-1-

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

CRA-103-DB-2010 (O&M)
Reserved on : March 13, 2020
Date of Decision: October 01, 2020

Rohtas @ Langur @ Bablu and others ...Appellants

Versus

State of Haryana ...Respondent

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

Present: Mr. Rakesh Nehra, Advocate for the appellants.

Mr. Vivek Saini, Additional A.G., Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 11.11.2009/14.11.2009 passed by the Additional Sessions Judge, Fast Track Court, Gurgaon in Sessions Case No.66 of 2007, whereby the appellants, who were charged with and tried for offences punishable under Sections 302/201/396 of the Indian Penal Code (for short 'the IPC'), have been convicted under Section 396 read with Section 120-B of the IPC and sentenced to undergo rigorous imprisonment for life and a fine of Rs.5,000/- each, in default of payment of fine, to further undergo RI for two years.

2. The prosecution case in brief is that on 19.10.2006 one telephonic message was received in Police Station Farrukh Nagar regarding one dead body lying near Horse Farm at Pataudi- Gurgaon Road in the area of Patli. On receipt

CRA-103-DB-2010

-2-

of this information ASI Randhir Singh alongwith Constable Rajpal and Constable Suresh Kumar reached the spot. There they met Vikram son of Mahender Singh who got recorded his statement to the effect that on 19.10.2006 at about 1.30 pm, he received a telephonic message that his father has expired and the dead body is lying near Horse Farm near Jamalpur- Gurgaon Road in the area of Patli. On receipt of this information, he reached the spot and found the dead body of his father lying there. He noticed some strangulation marks on the neck of his father. He stated that some unknown person had murdered his father by strangulation. Ruqa was sent through Constable Rajpal on the basis of which FIR No. 161 dated 19.10.2006 under Section 302, 201 of Indian Penal Code was registered. The dead body was got photographed. Rough site plan of the spot was prepared. Proceedings under Section 174 Cr.P.C. were conducted. Post mortem examination of the dead body was got conducted.

3. On 06.11.2006 accused Parmod alias Bhuru alias Bhura suffered a disclosure statement in another case FIR No. 1133 of 2006 and disclosed about being involved in several occurrences. He also disclosed about commission of the present occurrence. On 09.11.2006 accused Vikram alias Vicky and Harkesh alias Julfi also suffered disclosure statements in another case. On the basis of their respective disclosures statements, they were formally arrested in this case. The accused suffered disclosure statements regarding commission of this offence. Remaining accused were also arrested in this case. On the basis of these statements offences Section 396 and 311 of Indian Penal Code were added. On completion of investigation, report under Section 173 Cr.P.C. was submitted.

4. The prosecution examined as many as 30 witnesses in its support.

CRA-103-DB-2010

-3-

The statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations levelled against them and pleaded false implication. They further denied having made any disclosure statement or having got effected any recovery. They denied that any such occurrence had taken place. However, they did not lead any evidence in their defence.

5. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW1 HC Vijay Kumar deposed that on 19.10.2006 on receipt of Tehrir Ex.PA, FIR Ex.PA/1 was registered.

8. PW2 EHC Raghbir Singh deposed regarding delivery of special report to the Ilaqa Magistrate and senior police officers on 19.10.2006.

9. PW3 ASI Tej Ram deposed that on 06.11.2006 SI Sanjiv Kumar interrogated Parmod @ Bhuru in case FIR No. 1133/06. During interrogation Parmod suffered disclosure statement Ex. PB regarding commission of 26 offences. The present case was at Sr. No. 9. He disclosed that he along with co-accused Mukesh, Rohtash, Budhu, Ravi, Lalit, Harkesh gave lift to a person from Pataudi for Gurgaon in Jeep No. HR-61-1154. They murdered the said person and threw his dead body near Horse Farm near village Jhundsarai.

10. PW4 Jaiveer deposed that he took photographs of the spot on 19.10.2006. He proved the photographs Ex. P 1 to Ex. P 3 and the negatives Ex. P4 to Ex. P6.

11. PW5 Krishan son of Shri Chand r/o Village Jamalpur deposed that

CRA-103-DB-2010

-4-

on 19.10.2006 he was present at his house. He received information that a dead body was lying near Horse Farm House in Village Jhundsarai. On receipt of the information he along with his brother Ram Kishan and some other villagers reached at the spot and saw the dead body of his brother Mahender Singh lying there. Police prepared inquest report Ex.PC and obtained his signatures on it. His brother Ram Kishan also signed it. His statement was recorded by the IO at the time of inquest proceedings. He identified the dead body of his brother Mahender Singh. He deposed that the photographs Ex.P1 to Ex.P3 were of the dead body of his brother.

12. In cross examination he deposed that he had seen the deceased last on 18.10.2006.

13. PW6 Constable Suresh Kumar deposed that on 19.10.2006 he was posted in PS Farrukh Nagar. On that day on receipt of information at the police station that a dead body is lying near Horse Farm House village Jhundsarai he along with C. Rajpal and ASI Randhir Singh went to the spot and saw a dead body lying there. After some time owner of Anil Hotel came to the spot and identified the dead body as being of Mahender Singh r/o village Jamalpur. After that he went to the village Jamalpur and gave information to the relatives of the deceased. On receipt of information two brothers of the deceased and some villagers came to the spot. After some time Vikram s/o Mahender also came the spot after he was given information on telephone. After recording the statement of Vikram, ASI Randhir Singh sent a Tehrir to the PS through C. Rajpal for registration of the case. The dead body was taken to Civil Hospital for post mortem examination.

CRA-103-DB-2010

-5-

14. He further deposed that on 25.11.2006 he was posted on guard duty at the gate of the police station. Rohtash, Mukesh and Budh Ram who were in police lock up were taken out from the lock up by ASI Randhir Singh for interrogation. Rohtash suffered disclosure statement Ex.PD. Mukesh suffered disclosure statement Ex.PE. Parmod suffered disclosure statement Ex.PF about the offence. He attested the aforesaid memos as witness. The accused signed and thumb marked their disclosure statements.

15. In cross examination he stated that no public person was present when the disclosure statements were recorded.

16. PW7 HC Sat Narayan deposed that on 08.11.2006 he was posted as IO/HC in Police Station Bilaspur. On that day, he joined investigation with SI Shok Kumar in case FIR No.149. Vicky alias Vikram was interrogated by the IO in his presence. He suffered his disclosure statement Ex.PG for various offences. The present offence was at Sr. No. 4 regarding which he stated that he along with co- accused Parmod, Rohtash, Mukesh, Ravi and Harkesh gave lift to the passenger from Pataudi to Gurgaon in jeep bearing No. HR-61-1154 and threw his dead body near Village Jhund Sarai. He looted Rs.1400/- from him.

17. PW8 Karambir son of Siri Chand resident of Village Jamalpur deposed that on 14.11.2006 he was present at bus stand village Jamalpur. One thanedar alongwith three employees were present there. Four other persons were also with them. He could not disclose their names at present. Three persons out of those four were present in Court whom he could identify. He identified Mukesh, Parmod and Rohtash. He deposed that Rohtash got recovered one finger ring of copper. Vicky alias Vikram got recovered one purse.

CRA-103-DB-2010

-6-

18. On the request of the learned PP he was declared hostile and permitted to be cross examined.

19. In cross examination by learned PP he admitted that Vicky @ Vikram got recovered a copper ring and the word MS was imprinted on the ring. The ring belonged to Mahender Singh. He also admitted that accused Harkesh got recovered a purse belonging to his brother Mahender. He identified the ring Ex. P 7 and the purse Ex. P 8.

20. PW9 Mandeep Kumar deposed that on 22.11.2006 he was posted in PS Farrukh Nagar on general duty. On that day he along with Virender Singh were joined in investigation with ASI Randhir Singh. Accused Ravi Kumar got demarcated the place vide Ex.PK where he along with his co-accused had thrown the dead body of deceased after committing murder near Ghora farm house Gurgaon - Pataudi road. Accused Ravi Kumar also got demarcated the place where he got recovered copy pertaining to account of deceased. He proved the demarcation and recovery memo Ex. PL . He identified the accused in Court.

21. PW10 Constable Balkesh deposed that on 18.11.2006 he was posted in PS Farrukh Nagar. He denied that anything happened before him. He stated that he did not know anything about this case. At the request of the learned PP he was declared hostile and permitted to be cross examined by the PP.

22. In cross examination by learned PP he admitted that on 22.11.2006 accused Ravi Kumar was interrogated before him. He suffered his disclosure statement Ex.PM about this case wherein he stated that he could get demarcated the place where they had thrown the dead body of the deceased after murdering him and that he could get recovered the note book pertaining to account of

CRA-103-DB-2010

-7-

deceased from his house. He also admitted that Ravi Kumar had also signed his disclosure statement. He identified the accused in Court.

23. PW11 C. Subhash deposed that on 01.11.2006 he was posted in PS Farrukh Nagar on general duty. On that day he was joined in investigation with ASI Randhir Singh. On that day accused Harkesh was interrogated before him and he suffered disclosure statement Ex.PN to the effect that on 18.10.2006 he along with his co- accused Parmod, Rohtash, Mukesh, Ravi Kumar r/o Shora Kala and Vicky gave lift to a person from Pataudi in jeep No. HR 61 1154 and threw the dead body after murdering him. One purse containing photographs of the deceased, Rs.1400/- cash, one ring and some papers and belongings of the deceased were divided by them amongst themselves. Accused Vicky also suffered his disclosure statement Ex.PO on the same lines as Harkesh.

24. In cross examination by Counsel for the accused he stated that the disclosure statement was recorded in P.S. Farrukh Nagar. On that date five accused suffered their disclosure statements which were recorded in his presence.

25. PW12 Inspector Sanjeev Kumar deposed that on 6.11.2006 he was posted as In-Charge Special Staff, Sector-10, Gurgaon. On that day he investigated FIR No. 1133/06 PS DLF. On that day accused Parmod was interrogated before ASI Tej Ram and he suffered disclosure statement Ex.PB in respect of 26 occurrences including of this case which is mentioned at Sr. No. 9. Regarding this case he stated that in the month of October 2006 he along with his co- accused Mukesh, Baddu, Ravi, Harkesh and Lalit gave lift to a person from Pataudi. They threw his dead body between village Bawra Jundsarai. Rs.400/- were recovered from him. Accused Parmod also signed the disclosure statement. He further

CRA-103-DB-2010

-8-

deposed that the same day accused Ravi suffered disclosure statement Ex.PQ, accused Rohtash suffered disclosure statement Ex.PR, Mukesh suffered disclosure statement Ex.PS. On the same day Max Mahendra Jeep No. HR-61-1154 was also got recovered from Rohtash and taken into possession vide memo Ex.PT. He identified the accused in Court.

26. In cross examination by Counsel for the accused he stated that the disclosure statement of all the accused were recorded at IFFCO Chowk. There was hustle and bustle at IFFCO Chowk. No independent person was willing to join them. The Jeep was also taken into possession the same day at about 12.00 noon .

27. PW13 Vikram son of Mahender Singh deposed that Mahender Singh was his father. He was a shopkeeper in Pataudi. On 18.10.06 he was present with his father in the shop. He left the shop at 6.30 pm to go to his village Jamalpur. His father asked him that all his belongings be put in a bag. He collected the belongings of his father and put them in a bag. On 19.10.06 at about 1.30 pm a telephonic message was received by him to the effect that some one had murdered his father and his dead body was lying near Ghora farm house near village Jhundsarai. He along with his uncle and some villagers went to the spot and found that dead body of his father was lying there. He made the complaint Ex.PU to the police.

28. On 25.11.06 on being called he went to PS Farrukh Nagar. He usually visited the Police Station regarding the case of his father. One Naib Tehsildar, 3/4 police persons and Thanedar met him there. Thereafter, they left for the place of occurrence for identification. Accused Parmod, Mukesh, Rohtash were also with them. Accused Parmod got demarcated the place and got recovered one

CRA-103-DB-2010

-9-

photocopy of ration card from the bushes near Ghora farm house. He (PW13) identified the ration card. The same was taken into possession vide memo Ex.PV. Thereafter, accused Makesh got recovered the clothes which were packed in red polythene on which Vikram Garments were mentioned. The clothes belonged to his father. The recovered articles were taken into possession vide memo Ex.PV/1 and attested by him. Accused Rohtash got recovered one leather belt after demarcating the place. He (PW13) identified the belt as belonging to his father. The same was taken into possession vide memo Ex.PV/2 and attested by him. He identified the leather belt Ex.P1, the pant and shirt Ex.P2 and Ex.P3 and photocopy of ration card Ex.P4. He identified accused Mukesh, Parmod and Rohtash in Court.

29. In cross examination by Counsel for the accused he stated that the dead body of his father was lying 7/8 foot from the main road. He was wearing clothes but the same were in torn condition and were stained with blood.

30. PW14 HC Mohan Singh tendered in evidence his affidavit wherein he stated that he was posted in DLF as MHC and Malkhana was in his custody. On 06.11.2006 SI Rajeev Kumar I/C Special Staff of Sector 10 A Gurgaon deposited with him one Max Mahendra vehicle No. HR-61-1154 involved in case FIR No. 1133 dated 04.11.2006 under Section 302/201 IPC PS DLF as per recovery memo. On 27.12.06 in case FIR No.1133/06 under Sections 302/201 IPC PS DLF, photocopy of recovery memo was delivered to Sanjay Kumar SI/SHO PS Farrukhnagar in case FIR No. 161 dated 19.10.06 under Sections 302/201/396/311 IPC PS Farukhnagar. Till the case property remained in his custody neither he nor anybody else tampered with same.

CRA-103-DB-2010

-10-

31. PW15 Attar Singh son of Mahabir resident of Village Noorpur, Distt. Gurgaon deposed that in the November 2006 he had gone to the Police Post Bilaspur to enquire about the case. Harkesh accused was interrogated before him and suffered disclosure statement Ex.PX that he gave a lift to a person from Dharanera to Bilaspur in jeep. On the way they committed murder of that passenger and threw his dead body in the fields near village Bhorakala. The field was of Dinesh. Accused also disclosed that they committed 10/11 more murders.

32. PW16 ASI Randhir Singh deposed that on 19.10.2006 he was posted in PS Farrukh Nagar. That day a telephonic message was received in the Police Station to the effect that a dead body was lying on the Pataudi- Gurgaon road near village Jhundsarai. He alongwith C. Rajpal, C. Suresh Kumar went to the spot where Vikram s/o Mahender Singh r/o Jamalpur met him and got recorded his statement Ex.PU. He made his endorsement Ex.PA and sent the same to the police station for registration of the case. He inspected the spot and prepared rough site plan Ex.PY. He prepared inquest report Ex.PC. Thereafter he recorded the statement of PWs. He sent the dead body for post mortem examination to the General Hospital, Gurgaon.

33. He further deposed that on 21.10.2006 he recorded supplementary statement of complainant Vikram. On 29.10.2006 Jaibir Singh photographer handed over photographs of the spot Ex.P1 to Ex.P3 and their negatives Ex.P4 to Ex.P6. On 29.10.2006 he got prepared scaled site plan from Sharvan Kumar draftsman. On 07.11.2006 disclosure statement of accused Parmod was received from PS DLF. On 09.11.2006 disclosure statements of Vickey and Harkesh were received from PS Manesar. On 14.11.2006 accused Vikey and Harkesh were

CRA-103-DB-2010

-11-

joined in the investigation of this case with the permission of the Court. Both accused suffered their individual statements. In his disclosure statement Ex.PN Harkesh stated that on 18.10.2006 he alongwith with his co- accused namely Ravi, Parmod, Mukesh, Rohtash and Vickey gave a lift to a person from Pataudi to Gurgaon in jeep No. HR-66-1154. After crossing the Jamalpur they committed his murder by throttling him with the help of belt. They threw the dead body near Ghora Farm Jhundsarai. They looted his money. He also disclosed that one ring of copper came to his share on which MS was inscribed and he could get the same recovered. Again said the aforesaid contents were disclosed by accused Harkesh. Then said Vickey. The disclosure statement of Vickey is Ex.PO. Accused Vickey also disclosed that he could get recovered the copper ring from bushes near Ghora farm within revenue estate of Jhundsarai.

34. Accused Harkesh suffered disclosure statement that he could get recovered coca- cola coloured purse containing photographs of the deceased from near the road between village Jhundsarai. Again said Village Dhorakala. Pursuant of disclosure statement accused Vickey got recovered one copper ring which was taken into possession vide memo Ex.PH. PW Karambir identified it as belonging to Mahender. Accused Harkesh got recovered one purse vide Memo Ex.PI. It was identified by PW Karambir as belonging to Mahender.

35. He further deposed regarding the disclosure statement made by accused Ravi Kumar on 22.10.2006 regarding the occurrence. Pursuant thereto he got recovered one diary of shop account which had come to his share. The same was taken into possession vide memo Ex.PL. He further deposed that on 25.11.2006 accused Parmod, Mukesh and Rohtash who were in lock up in case

CRA-103-DB-2010

-12-

FIR No. 163 of PS Farrukh Nagar were joined in investigation of this case. Aforesaid accused disclosed their individual statements Ex.PD of Rohtash, Ex.PE of Mukesh and Ex.PF of Parmod. Accused Parmod got recovered ration card copy which was taken into possession vide recovery memo Ex.PV which is attested by complainant Vikram and Mohd. Ishaq Naib Tehsildar. Accused Mukesh got recovered clothes belonging to the deceased which were taken into possession vide recovery Memo PV/1. Accused Rohtash got recovered one identity card of the deceased and one belt which was taken into possession vide Memo PV/2. He identified the leather belt Ex. P1, pant Ex. P2, shirt Ex. P3, Ration Card Ex. P4.

36. PW17 Inspector Ashok Kumar deposed that on 08.11.2006 he was posted in PP Bilaspur as Sub- Inspector. He deposed regarding the disclosure statement Ex.PG of accused Vicky alias Vikram during interrogation in case FIR No. 149 of 2006 regarding his involvement in six occurrences. The present case was at Sr. No. 4. He further deposed regarding the disclosure statement Ex.PX of accused Harkesh regarding his involvement in ten occurrences including this case.

37. PW18 C. Jai Singh brought the record of FIR No. 277/06. Ex. PGG was photocopy of the said record.

38. PW19 brought the record of FIR No. 1133/06 DLF. Ex. PHH was photocopy of the said record.

39. PW20 HC Prem Kumar brought the record of FIR No. 941/06 PS Sadar, Gurgaon. Ex.PKK is true photostat copy of the same. Ex.PLL is the photostat copy of original FIR No. 938 of 06 PS Sadar, Gurgaon. (Objected to.) Ex.PMM is true photostat copy of FIR No. 957. (Objected to).

40. In cross examination by Ld. Counsel for accused he admitted that

CRA-103-DB-2010

-13-

nothing was written in FIR No. 938 P.S. Gurgaon. Similarly nothing was written in FIR No. 957 also.

41. PW21 MHC Kanwar Singh proved photocopy of FIR No. 373 Ex.PNN, Ex.POO photo copy of FIR No. 381, Ex.PQQ photostat copy of FIR No. 121 of 06 PS Manesar, Ex.PRR photostat copy of FIR No.149/06 PS Manesar, Ex.PSS true photostat copy of FIR No.387 PS Manesar of 06 and Ex.PTT true photostat copy of FIR No. 375/06 PS Manesar. (All exhibits from Ex.PNN to Ex.PTT were objected to).

42. PW22 HC Nafe Singh tendered in evidence his affidavit wherein he stated on 25.11.06 ASI Randhir Singh deposited case property i.e. one packet of belt duly sealed. On 4.1.07 above case property was handed over to SI/SHO Sanjay Kumar for getting opinion of doctor. After obtaining the opinion of doctor he deposited it back on the same day.

43. PW23 ASI Kamlesh Kumar proved Ex. PVV, copy of FIR No. 907 of 2006.

44. PW24 MHC Randhir Singh proved PWW copy of FIR No. 190 and Ex. PXX copy of FIR No. 197.

45. PW25 EHC Dinesh Kumar proved Ex. PYY copy of FIR 677 PS Udyog Vihar, Gurgaon.

46. PW26 HC Teeka Ram proved Ex.PZZ copy of FIR No. 106 of 2006 PS Pataudi

47. PW27 Dr. Kuldeep Singh, MO, Mini Sectt. Gurgaon deposed that on 20.10.2006 he conducted post mortem examination on the dead body of Mahender Singh. On examination he noted the following :-

“The length of the body was 5 feet 5 inch and he was wearing brown shirt white baniyan light grey pant black u/wear, body was average built and nourished. Left eye was opened. Right eye was closed. Conjunctive was congested. Face congested. Clotted blood was present in mouth and nostril. RM present in hands and partially in lower limbs. Following injuries were present on his body:

- 1. Head and face severally congested with swelling on parietal area 4x2 inches.*
- 2. Contusion around right eye with swelling. Eye is closed. Reddish blue in colour.*
- 3. Abrasion on lower limb and contusion on inner side upto gum and clotted blood present.*
- 4. Multiple irregular abraded contusions in front of the neck starting 2.5 cm below the chin upto the supra sterna, notch in area of 6x4 inch, clotted blood present. Reddish blue in colour.*
- 5. Abraded contusion on the right side of the neck 4 inch below the right ear in an area of 3.5x3 inch. Clotted blood present. Reddish blue in colour.*
- 6. Abraded contusion on left side of neck 2.5 inch below the left ear going posteriorily of the size of 5x2 inch. Placed transversely. Clotted blood was present. Reddish blue in colour. On dissection of neck there is congestion ecchymosis in the subcutaneous tissue, muscle the thyroid cartilage fractured in the middle anteriorily. On both side laterally (upper parts). There is fracture of the thyroid bone on the left side. Tracheal rings are fracture below the thyroid cartilage. Trachea is severally congested and having small clots in it. There is bleeding echymoses at the fracture side of thyroid cartilage and hyoid bone.*
- 7. Abraded contusion on right shoulder 6x4 cm reddish in colour.*
- 8. Multiple small abrasions placed in a circular manner on*

lateral aspect of right arm (question mark bite marks)

9. Multiple irregular contused abrasions are present on both buttocks and lower part of back. Clotted blood present. Continuous as reddish again said contusions are reddish blue in colour.”

In his opinion the cause of death in this case was asphyxia due to strangulation which was ante- mortem in nature and was sufficient to cause death in normal course of nature.

Probable time between injury and death was few minutes and between death and post mortem was within 24 to 48 hours. On 4.1.07 SI Sanjay Kumar moved an application Ex.PBBB for seeking opinion by putting leather belt to him. He tendered his opinion at Ex.PBBB/1 stating that the injuries mentioned in PMR can be caused due to this belt. He identified the leather belt Ex.P1 as being the same belt.

48. PW28 SI Daya Ram deposed that on 02.12.2006 he received the case file from ASI Randhir Singh for further investigation. He added Section 396/311 IPC during investigation. On his transfer he handed over the case file to ASI Randhir Singh.

49. PW29 Sharvan Kumar Draftsman proved the scaled site plan Ex. PCC.

50. PW30 SI Sanjay Kumar deposed that on 27.12.2006 he recorded statement of night MHC PS DLF regarding the jeep in question. On 04.01.2007 he moved application Ex. BBB seeking opinion of the Medical Officer GH Gurgaon with regard to the injuries being caused by the leather belt. The doctor tendered his opinion Ex. BBB/1 at the bottom of the application. After completion of

CRA-103-DB-2010

-16-

investigation he prepared challan u/s 173 Cr. P. C.

51. The Ld. PP tendered in evidence the report of FSL, Bangalore on polygraph examination Ex.PDDD. Ex.PEEE is the Brain Mapping report.

The Conclusion in the report of Polygraph Examination of the accused was as under:

“When the questions related to the crime cited above were administered to Mr. Mukesh Omkar, Mr Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput the signs of deception were seen indicating non truthfulness in their statement given. This suggests that the above mentioned accused are not truthful in their statement given and have knowledge of the crime.”

The Conclusion in the report on Brain Mapping Examination of the accused was as under:

“The major findings supported by the Brain mapping tests are indicative of the possession of knowledge about the activities listed above by Mr. Mukesh, Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput. Brain activation during information processing and generation of such ERP responses associated with target are suggestive of primary encoding information with Mr. Mukesh Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput and thus suggesting active participation of Mr. Mukesh Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput.”

52. The entire case against the accused is based on their disclosure statements, their naming the other accused as being the participants in the crime

CRA-103-DB-2010

-17-

and the recoveries effected pursuant to the disclosure statements.

53. As per the prosecution on 19.10.2006 one telephonic message was received in Police Station Farrukh Nagar regarding one dead body lying near Horse Farm at Pataudi- Gurgaon Road in the area of Patli. On receipt of this information ASI Randhir Singh alongwith other officials reached the spot. There they met Vikram son of Mahender Singh who got recorded his statement to the effect that on 19.10.2006 at about 1.30 pm, he received a telephonic message that his father has expired and the dead body is lying near Horse Farm near Jamalpur- Gurgaon Road in the area of Patli. On receipt of this information, he reached the spot and found the dead body of his father lying there. He noticed some strangulation marks on the neck of his father. He stated that some unknown person had murdered his father by strangulation.

54. The involvement of the accused in this case is alleged to have come to light during investigation of FIR No. 1133/06 PS DLF. PW12 Inspector Sanjeev Kumar deposed that on 06.11.2006 he was posted as In-Charge Special Staff, Sector- 10, Gurgaon. On that day accused Parmod was interrogated in that case. He suffered disclosure statement Ex.PB in respect of 26 occurrences including this case which is mentioned at Sr. No. 9. Regarding this case he stated that in the month of October 2006 he along with his co- accused Mukesh, Baddu, Ravi, Harkesh and Lalit gave lift to a person from Pataudi. They threw his dead body between village Bawra Jundsarai. Rs. 400 were recovered from him. The same day accused Ravi suffered disclosure statement Ex.PQ, accused Rohtash suffered disclosure statement Ex.PR, Mukesh suffered disclosure statement Ex.PS. On the same day Max Mahendra Jeep No. HR-61-1154 was also got recovered from

CRA-103-DB-2010

-18-

Rohtash and taken into possession vide memo Ex.PT.

55. As per the deposition of PW16 ASI Randhir Singh on 07.11.2006 disclosure statement of accused Parmod was received from PS DLF. On 09.11.2006 disclosure statements of Vikey and Harkesh were received from PS Manesar. On 14.11.2006 accused Vikey and Harkesh were joined in the investigation of this case with the permission of the Court. Both of them suffered their separate disclosure statements. In his disclosure statement Ex.PN Harkesh stated that on 18.10.2006 he alongwith with his co- accused namely Ravi, Parmod, Mukesh, Rohtash and Vikey gave a lift to a person from Pataudi to Gurgaon in jeep No. HR-66-1154. After crossing the Jamalpur they committed his murder by throttling him with the help of belt. They threw the dead body near Ghora Farm Jhundsarai. They looted his money. He also disclosed that one ring of copper came to his share on which MS was inscribed and he could get the same recovered from bushes near Ghora farm within revenue estate of Jhundsarai. The ring was got recovered by him. PW Karambir identified it as belonging to Mahender. Accused Harkesh got recovered one purse vide Memo Ex.PI. It was identified by PW Karambir as belonging to Mahender. On 22.10.2006 accused Ravi Kumar made disclosure statement pursuant thereto he got recovered one diary of shop account which had come to his share. PW16 further deposed that on 25.11.2006 accused Parmod, Mukesh and Rohtash who were in lock up in case FIR No. 163 of PS Farrukh Nagar were joined in investigation of this case. They suffered their separate statements Ex.PD of Rohtash, Ex.PE of Mukesh and Ex.PF of Parmod. Accused Parmod got recovered ration card. Accused Mukesh got recovered clothes belonging to the deceased.

CRA-103-DB-2010

-19-

Accused Rohtash got recovered one identity card of the deceased and one belt. He identified the leather belt Ex.P1, pant Ex. P2, shirt Ex.P3, Ration Card Ex.P4. PW13 Vikram also identified the said articles as belonging to his father.

56. PW17 Inspector Ashok Kumar deposed regarding the disclosure statement Ex.PG of accused Vicky alias Vikram during interrogation in case FIR No.149 of 2006 regarding his involvement in six occurrences. The present case was at Sr.No.4. He further deposed regarding the disclosure statement Ex.PX of accused Harkesh regarding his involvement in ten occurrences including this case.

57. The Ld. Trial Court has held the said disclosure statements revealed that the accused were serial killers. They had conspired to commit the murder of innocent persons by giving them a lift in their vehicle. The accused would pose themselves as co- passengers in the vehicle. Once the person sat in their vehicle the accused on getting a suitable opportunity would murder him and take his belongings which would be shared by them. The Trial Court further held that thus there was prima facie evidence against them that they were party to a conspiracy. Once such inference was drawn anything said, done or written by any of the conspirators became admissible and relevant u/s 10 of the Evidence Act.

58. The Ld. Trial Court further relied on the brain mapping and the lie detection tests and reports Ex.PDDD and Ex.PEEE. Therein, it had been specifically opined that when questions relating to the crime were put to accused Mukesh and Parmod they were seen indicating non-truthfulness which suggested that they were not truthful in their statements and had knowledge of the crime.

59. Both the aforesaid reasons based whereon the Ld. Trial Court convicted the accused cannot legally be used against the accused.

60. Hon'ble Supreme Court in *Indra Dalal v. State of Haryana, (2015) 11 SCC 31* has held that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statements made during the period when the conspiracy subsisted. However, any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention has ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.

The relevant extract from the judgment is as under:

“24. At this juncture, let us discuss as to whether the disclosure/confessional statement (Mark A) made by appellant Jaibir in another case would be relevant to prove the charge of conspiracy. It would be pertinent to point out that this statement is made by Jaibir much after the incident, when, naturally, the common intention had ceased to exist. On this ground alone it would not be admissible. We would like to refer to the judgment of this Court in Mohd. Khalid v. State of W.B.³ wherein this Court held: (SCC p. 360, para 33)

“33. In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under Section 164 of the Code has to be given credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of the learned counsel for the

appellant-accused that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. In State of Gujarat v. Mohd. Atik it was held that the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.”

25. Likewise, in Firozuddin Basheeruddin v. State of Kerala, this Court discussed the law of conspiracy exhaustively and following passages therefrom would be sufficient to elucidate the legal position enshrined in Sections 120-A and 120-B IPC: (SCC pp. 607-08, paras 25-27)

“25. Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the

conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:

'Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States.)

27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confrères."

26. The Court also noted the earlier judgment in State v. Nalini wherein the principles governing the law of conspiracy had been summarised. Those principles are reproduced in para 32 of the judgment. For our purposes, Principle 2 is reproduced as under: (Firozuddin Basheeruddin case, SCC p. 613)

"32. ... '583. ... 2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the

CRA-103-DB-2010

-23-

conspiracy like giving shelter to an absconder.’ (Nalini case, SCC p. 516, para 583)”

Thus, the alleged disclosure/confessional statement (Mark A) made by Jaibir in another case would be of no consequence.”

61. In ***Selvi v. State of Karnataka, (2010) 7 SCC 263*** Hon'ble Supreme Court held that the compulsory administration of narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) violates the “right against self-incrimination” and the test results cannot be admitted in evidence if they have been obtained through the use of compulsion.

62. As regards the recoveries made pursuant to the disclosure statements of the accused all that needs to be noted is that the alleged recoveries have been made from places accessible to all, the recoveries have been made more than a month after the discovery of the body of the deceased. It would be unsafe to convict the accused solely on the basis of these recoveries.

63. Accordingly, this appeal is allowed. The appellants – accused are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 01, 2020

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No