

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

CRA-D-361-DB of 2006

Reserved on : 24.02.2020

Date of decision : 04.03.2020

Birender Singh and another

.... Appellants

Versus

State of Haryana

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Shokeen Singh Verma, Advocate,
for the appellants.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 20.03.2006 and order dated 22.03.2006, rendered by learned Additional Sessions Judge, Jhajjar, in Sessions Trial No. 11 of 2005, whereby appellants Birender Singh and Manbir alias Lala, who were charged with and tried for the offences punishable under Sections 302/34, 201, 404 and 392 of the Indian Penal Code (for short 'IPC'), 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 a period of three months under Section 302/34 IPC. They were further convicted and sentenced to undergo rigorous imprisonment for a period of seven years each and to pay a fine of ₹ 1,000/- each, and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 392 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of ₹ 1,000/- each, and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 201 IPC. They were further convicted and sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of ₹ 1,000/- each, and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 404 IPC.

2. According to learned counsel for the appellants, appellant Birender Singh died during the pendency of this appeal. Hence, appeal qua him stood abated vide order dated 24.02.2020.

3. The case of the prosecution, in a nutshell, is that on 07.06.2003, a telephonic message was received from Ram Kishan son of Sukhbir Singh to the effect that a dead body was lying on Surakhpur-Girawar road near minor. SHO along with ASI Mahipal and other police officials reached the spot. They met Ram Kishan. According to Ram Kishan, at about 7.30 AM, his father Sukhbir Singh reached near minor on Surakhpur-Girawar road from the fields. When he reached near the minor, he found the dead body of a young boy lying there. The dead body was having a plastic string around his neck. He informed the police. The dead body was not identified by any

body. Ruqa was sent to the police station. FIR was registered. Photographs were taken and inquest report was prepared. The dead body was sent for post-mortem examination. The cause of death in the post-mortem report was mentioned to be asphyxia and shock due to strangulation, which was ante-mortem and sufficient to cause death in normal course of nature. The clothes of the dead body were kept in safe custody for identification. On 12.06.2003, SI Seva Singh along with Seva Singh son of Udey Singh and Hazara Singh identified the photographs and dead body to be of Harjit Singh son of Seva Singh. Clothes were taken into police possession. Statement of Sumit Kumar was recorded on 13.06.2003 and car No. DL-3CU-4249 was taken into police possession, when a message was received from Lok Nath Tiwari, Damo, M.P. to the effect that the car in question was lying there and some persons were trying to sell it. ASI Hanif Mohammed went to M.P. Accused Birender and Manbir were arrested on 14.06.2003. Offences under Sections 404/392 IPC were also added on 13.06.2003. ASI Hanif Mohammed recorded the statements of the witnesses on 14.06.2003. Accused made disclosure statements Ex.PB and Ex.PC. 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. According to them, they were falsely implicated. The accused were convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants has

vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

7. PW.1 Seva Singh son of Udey Singh deposed that 1 year and 2 ½ months back, he and Santokh Singh went to Police Station Jhajjar to make enquiry regarding this case. Hazara Singh was also with them. The photos and clothes of his son Harjit Singh were shown to them. He and Hazara Singh identified the photos and clothes to be of his son Harjit Singh. The identification memo is Ex.PA. On 17.06.2003, he and Santokh Singh again went to Police Station. In their presence, the Investigating Officer interrogated Birender and Manbir. Birender made disclosure statement Ex.PB. Manbir was also interrogated. He made disclosure statement Ex.PC. Birender got recovered the purse from the bushes from the stated place, which had also a photograph of his son. One electricity bill and a visiting card was also recovered. These were taken into possession vide recovery memo Ex.PD. Manbir got recovered stereo from the disclosed place. It was also taken into possession vide memo Ex.PE. Birender also got recovered the stepney from the disclosed place. It was taken into possession vide memo Ex.PF. In his cross-examination, he deposed that Birender and Sumit took the Sumo of his son after hiring the same. His son was plying the Sumo as a Taxi on hire. The vehicle was taken by them on hire on 06.06.2003. They had gone to the Police Station of their own when they identified the clothes and photos in the Police Station. He wrote the date on Ex.PA in

Punjabi. The clothes were taken out from a polythene bag. He received information from Police Station Jhajjar regarding the recovery of the vehicle. He was accompanying the Haryana Police when they brought the vehicle and the accused from Madhya Pradesh. The Madhya Pradesh Police also recorded the disclosure statement of the accused persons. He took the vehicle on superdari either on 24th or 25th.

8. PW.2 Ram Kishan deposed that he was Sarpanch of the village. On 07.06.2003, when he was present at his house, his father informed him that dead body of a young man was lying near the minor in between village Surakhpur and Girawari. He went to the spot. He saw the dead body. He informed the police. His statement Ex.PJ was recorded.

9. PW.3 Surat Singh deposed that on 07.06.2003, he heard in the village that dead body of a young man was lying near the bridge of minor of village Surakhpur. He went there. There was a plastic rope around the neck of the dead body. There were some injuries on his private parts.

10. PW.4 R.K. Budhiraja Inspector testified that on 11.06.2003, he was posted as SHO in Model Town Police Station Delhi. Seva Singh, father of the deceased, appeared before him in the Police Station and produced an application Ex. PK. He entrusted the matter to Seva Singh SI for verification.

11. PW.5 Subhash Chander had prepared the scaled site plan Ex.PL.

12. PW.6 Rattan Lal HC had taken the clothes and a rope to FSL Madhuban vide RC No. 84.

13. PW.8 Surender Kumar HC had taken the photographs of the

dead body at the spot on 07.06.2003. The photographs are Ex.P1 to Ex.P9.

14. PW.10 Hanif Mohammed ASI is a material witness. He testified that on 14.06.2003, he was posted in Police Station Jhajjar. He went to Police Station Kotwali Damo (M.P.) accompanied by police force and the heirs of the deceased i.e. Seva Singh. Accused Birender and Manbir were arrested by the Madhya Pradesh Police under Section 41 Cr.P.C. He contacted Shri L.N. Tiwari, City Inspector of that Police Station. Both the accused were produced before the Ilaqa Magistrate at Damo. He arrested them in this case. He obtained transit remand from the Ilaqa Magistrate. He took into possession one Indica car bearing registration No.DL 3CU 4249, which was in the custody of MHC of that Police Station. The papers pertaining to the car i.e. RC, DL and Insurance Policy were also taken into possession with the car. The recovery memo is Ex.PN. It was attested by Suresh Kumar, MHC of that Police Station. He stayed during the night at Damo. On 16th, he arrived at Jhajjar with the accused. In his cross-examination, he deposed that he had received information on 13.06.2003 at about 5.00 PM regarding the arrest of both the accused by Damo police. The distance between Jhajjar and Damo could be around 1000 Kms. They went to that Police Station in a Government vehicle and arrived in that Police Station at about 2.30 PM. Seva Singh and Santokh Singh remained with him at Damo. He had not obtained their signatures on any paper as witness. On the recovery memo regarding car, he had obtained the signatures of MHC of that Police Station.

15. PW.12 Attar Singh HC deposed that a ruqa was received from Rajender Singh SI/SHO, Police Station Jhajjar, on 07.06.2003 at about 1.15

PM. Rajender Singh SHO deposited with him a sealed parcel of rope duly sealed with the seal of doctor, and an unsealed parcel of clothes of deceased Harjit for safe custody on 07.06.2003. On 12.06.2003, the unsealed parcel of the clothes was obtained from him for identification of the clothes. Thereafter, the clothes were re-deposited with him in a sealed parcel duly sealed with the seal of RS. He handed over the sealed parcels to Rattan Singh EHC on 30.06.2003 vide RC No. 83 for taking the same to FSL Madhuban.

16. PW.13 Seva Singh SI deposed that that the application of Seva Singh complainant was entrusted to him by the SHO of Police Station Model Town, Delhi. The application is Ex.PK. He made enquiry from Seva Singh complainant and other person Bhupinder Singh accompanying him whether they had doubt on some person. They doubted about one Sumit. They also told that Sumit could disclose the name of other two persons who hired the vehicle. They went to the house of Sumit. He was not present there. The other members of the house told that Sumit had gone to the village where his sister was married. Then they went to that village. Sumit was found there. He made enquiry from Sumit and he disclosed that two persons accompanying him were Birender and Manbir. Both of them had left him at the house of his sister and went away with the vehicle. He enquired about the addresses of those two persons. They went to village near Sampla. He was told that Birender was not coming to the house. It also came during the enquiry that Manbir was not available at his house for the last 4-5 days. Then he visited Police Station Jhajjar, when he came to know that dead body of a young man was found lying near Surakhpur minor. The

SHO told him that he was having clothes and photos of the dead body. Seva Singh and Hazara Singh identified the same to be of Harjit Singh. In his cross-examination, he deposed that he had told Haryana Police that Sumit told him the name of Birender and Manbir, but he could not say whether it was recorded or not in his statement. In his statement Ex.DA, it was not so mentioned. He had told the police that Sumit was not found available at village Naina. He was confronted with his statement Ex.DA, wherein it was not so stated. He told the Haryana Police that Manbir was not found at village Surakhpur and he was told that he was away from house for the last 4-5 days. He was confronted with his statement Ex.DA, where it was not so stated.

17. PW.14 Bhupinder Singh testified that on 06.06.2003 at about 4.30 PM, he was sitting with Seva Singh at his house, when Sumit came to them and wanted to hire taxi saying that the sister of his friend was ill. Harjit Singh accompanied him with his taxi Indica car No. DL 3CU 4249 but he did not come back. They waited for him to come back for about two days. Then they went to Police Station Model Town Delhi. Report was lodged.

18. PW.15 Rajender Singh SI deposed that on 07.06.2003, he was posted as SHO Police Station, Jhajjar. At about 8.45 AM, he received a telephonic message from Ram Kishan. He went to the spot. He recorded the statement of Ram Kishan vide Ex.PJ. He arranged photographer. He conducted inquest proceedings. Dead body was sent for post-mortem examination. He prepared rough site plan Ex.PV. On 12th, he showed the clothes of the dead body and the photos to Seva Singh. He identified the

same to be of his son Harjit Singh. On 13.06.2003, he received a telephonic message from SHO Damo in Madhya Pradesh that one Indica car was in possession of Birender and Manbir, who were trying to sell it. The vehicle was bearing registration No. DL 3CU 4249. The RC was in the name of Seva Singh. He sent Hanif Mohammed ASI with some Constables to Damo. Complainant Seva Singh accompanied him. He came back with the vehicle and both the accused Birender and Manbir on 16th. Both the accused were interrogated. They made disclosure statements, on the basis of which recovery of purse containing visiting cards, photograph of Harjit and an electricity bill, stereo and stepney was effected. The accused also pointed out the place, where the dead body of Harjit Singh was thrown. Their disclosure statements are Ex.PB and Ex.PC. On 18.06.2003, he recorded the statement of Sukhbir. On 23.06.2003, he moved an application Ex.PR/1 for obtaining the opinion of the doctor whether the strangulation of Harjit could be made with the rope shown to him. The doctor in his report Ex.PR mentioned that the strangulation was possible with that rope. In his cross-examination, he deposed that the rope was found tied around the neck of the deceased. He recorded the statement of Bhupinder on 12.06.2003 correctly.

19. PW.16 Rahul Khare deposed that in the year 2003, he was working as a Manager in Arjun Hotel, Damo. He produced the visiting register regarding the persons who were visiting their Hotel in Damo. Photocopy of the entries of the original register is Ex.PAA.

20. PW.17 Sumit is the star witness. According to him, about 1 ½ years back, he had gone to Uttam Nagar, Delhi, from his village by bus. Raj

Kumar was employed as Conductor in DTC Delhi. He belonged to their village. He had gone to see him at Delhi. When he reached in Azadpur, Delhi, he met Delhi police with 2-3 Sikh gentlemen. They took him to Model Town Police Station Delhi. Delhi Police wanted to ascertain from him regarding the persons who had hired the taxi of Harjit Singh. He told them that no taxi was hired by any person in his presence from Harjit Singh nor he knew anything about details of any such person. Thereafter, he was brought to Police Station Jhajjar by Jhajjar police. His signatures were obtained on some papers. He did not know what was written on those papers. He did not know anything about this case nor any body hired the taxi of Harjit Singh in his presence. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination, he deposed that he had made no statement before the police that on 06.06.2003 Birender asked him that he wanted to go to the house of his sister at Tilak Nagar, Rohtak and some taxi be hired for him for going to Rohtak, and for that purpose, he took Birender and Manbir to the house of Harjit Singh and his vehicle was hired for Manbir. He was confronted with his statement Ex.PBB, where it was so recorded. He further deposed in his cross-examination that he made no statement before the police that when Harjit did not come back for 2-3 days, then his father Seva Singh, Hazara Singh uncle and cousin came to his sister's house at Ladravan and then they met him at Azadpur. He made no statement before the police that thereafter, Delhi Police took him to Model Town Police Station Delhi and that he told entire facts to the police. He had not stated before the police that he told them that Birender and Manbir committed murder of Harjit Singh and that

the dead body was thrown near village Surakhpur and they ran away with the vehicle and goods, articles and belongings of Harjit Singh.

21. PW.18 Suresh Kumar Constable deposed that on 07.06.2003, he was posted in Police Post Dujana. He and Balbir Singh HC were associated by Rajender Singh SI. They went to the spot. Rajender Singh SI prepared the inquest report. The dead body was sent for post-mortem examination.

22. PW.11 Dr. Pardeep Sharma conducted the post mortem examination on 07.06.2003. In his opinion, the cause of death was asphyxia and shock due to strangulation which was ante-mortem in nature and sufficient to cause death in normal course of nature. In his cross-examination, he deposed that the death occurred on the night of 05.06.2003. The ligature mark was all around the neck.

23. According to the FSL report, traces of blood too small for serological tests were detected on exhibit-1 (rope). Exhibit 2a (shirt), exhibit 2c (banian) and exhibit 2d (knickers) were stained with blood. Blood could not be detected on exhibit 2b (pant).

24. According to PW.1 Seva Singh, Birender and Sumit hired Sumo of his son Harjit Singh. His son was plying the Sumo as a Taxi on hire. The vehicle was taken by them on hire on 06.06.2003. PW.14 Bhupinder Singh deposed that he was related to Seva Singh. On 06.06.2003 at about 4.30 PM, he was sitting with him at his house, when Sumit came to them and wanted to hire the Taxi saying that the sister of his friend was ill. Harjit accompanied him in taxi Indica car No. DL 3CU 4249. PW.10 Hanif Mohammed ASI deposed that he had recovered Indica car bearing

registration No. DL 3CU 4249 from Madhya Pradesh. It was brought back by him. The recovery memo of the car is Ex.PN. According to the RC, the vehicle was in the name of Seva Singh. In complaint dated 11.06.2003 Ex.PK, filed by PW.1 Seva Singh, initially there was mention of the Indica car and thereafter, it was mentioned as van. There is difference between 'Van', 'Car' and 'Sumo'.

25. PW.1 Seva Singh deposed that he had gone with the police to Madhya Pradesh. PW.10 ASI Hanif Mohammed deposed that he went to Madhya Pradesh along with Seva Singh and Santokh Singh. PW.15 Rajender Singh SI deposed that he had sent Seva Singh with the police to Madhya Pradesh. Santokh Singh has not been examined. PW.1 Seva Singh deposed that he alone had gone with the police to Madhya Pradesh. In case, Seva Singh and Santokh Singh were with PW.10 ASI Hanif Mohammed, he should have obtained their signatures on recovery memo Ex.PN. However, it has been signed by HC Suresh Kumar, but not by Seva Singh and Santokh Singh.

26. The case of the prosecution is that Sumit had come to hire taxi as per the statements of PW.1 Seva Singh and PW.14 Bhupinder Singh. However, PW.17 Sumit had not supported the case of the prosecution at all. According to him, he had met the Delhi Police in Azadpur, Delhi. The police wanted to ascertain from him regarding the persons who hired the taxi of Harjit Singh. He told that no taxi was hired in his presence from Harjit Singh nor he knew anything about those persons. His signatures were obtained on some blank papers. He denied the contents of Ex.PBB.

27. PW.15 Rajender Singh SI deposed that he had received a

telephonic message from SHO Damo in Madhya Pradesh. The prosecution has relied upon the statement of PW.16 Rahul Khare, Manager of Arjun Hotel, Damo, to prove that the accused had stayed in the Hotel in Damo. Photocopy of the entries of the original visiting register is Ex.PAA. At Serial No. 887, name of Rajesh Kumar, Rohtak, Haryana, has been mentioned. He is not the accused in this case.

28. The prosecution case is that the taxi was hired in the evening on 06.06.2003. The dead body was recovered on 07.06.2003. According to PW.11 Dr. Pardeep Sharma, as noticed here-in-above, the death had occurred on the night of 05.06.2003.

29. The case of the prosecution is that the appellants had snatched the car after strangulating Harjit Singh. Purse of Harjit Singh was also taken away. However, according to PW.11 Dr. Pardeep Sharma, dead body with all belongings, i.e. clothes and three rings, was handed over to the police. In case, the accused wanted to rob Harjit Singh, they would have also taken away three rings which were worn by him at that time.

30. The case of the prosecution is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the chain must be complete and all the circumstances must point towards the guilt of the accused. In the instant case, the chain is not complete.

31. The prosecution has failed to prove its case against the appellants beyond reasonable doubt.

32. Accordingly, the appeal is allowed. The impugned judgment dated 20.03.2006 and order dated 22.03.2006 rendered by the learned trial court are set aside. Appellant Manbir alias Lala is acquitted of the charges

framed against him. He is on bail. His bail bond and surety bond are discharged. Since appellant Birender Singh is stated to have died, therefore, appeal qua him stood abated vide order dated 24.02.2020.

(RAJIV SHARMA)
JUDGE

March 04, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes