

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

Reserved on : 19.2.2020

Date of decision : 2.3.2020

1. CRA-D No. 571-DB of 2005 (O&M)

Raju	 Appellant
versus	
State of Haryana	... Respondent

2. CRA-D No. 801-DB of 2005 (O&M)

Mohan alias Raju	 Appellant
versus	
State of Haryana	... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. V. K. Sachdeva, Advocate, for the appellants
(Legal Aid counsel).
Mr. Vivek Saini, Deputy Advocate General, Haryana.

Rajiv Sharma, J.

1. This judgment will dispose of the aforesaid two appeals as the same arise out of common incident.

2. The aforesaid appeals are instituted against the judgment dated 13.6.2005 and order dated 15.6.2005, rendered by learned Additional Sessions Judge, Karnal. Appellants Raju son of Surinder and Mohan alias Raju son of Chhote Lal were charged with and tried for the offence punishable under Sections 302, 201 read with Section 34 IPC. They were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 1000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each under Section 302 read with Section 34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹ 1000/- each and

in default of payment of fine to further undergo rigorous imprisonment for three months each under Section 201 read with Section 34 IPC. Both the substantive sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 1.3.2004 PW3 Manjoor Singh complainant met SI Baljit Singh near Government School, Village Rattak. He made his statement, Ex.P1. According to the averments made in the statement he had employed accused Mohan @ Raju for his agricultural and domestic work. Similarly, his elder brother Gurdial Singh had also employed accused Raju and Pati (deceased) for the agricultural purposes. All the three i.e. both the accused and deceased Pati were jointly living in a room situated adjoining to their farm house. On 29.2.2004 at about 7/7.30 P.M. all the three had gone to the farm of Buta Singh, brother-in-law of the complainant. On 1.3.2004 at about 8.30 A.M., the complainant saw the fire in the straw (*parali*) lying in the fields of his neighbour Jagdish. They went to the spot. They found cap of accused Mohan lying there. The servant of his brother, namely, Pati was found missing. However, both accused Mohan and Raju were found present at their farm-house. They enquired from both the accused turn by turn. They disclosed that they had murdered Pati by strangulation in the fields of Jagdish. They put his body on the straw (*parali*) and put it on fire. They further disclosed that they had prepared *lahan* about 15-20 days prior to the occurrence by concealing this fact from their employer and Pati (deceased) had disclosed this fact to complainant Manjoor Singh. Manjoor Singh had scattered the *lahan* and had broken the drum. Thus, they had grudge against Pati. SI Baljit Singh reached at the farm-house of the complainant Manjoor Singh. Many people had gathered there. Photographer was called. IO interrogated accused Mohan alias Raju. He made disclosure statement,

Ex.P11, that he could identify the place of murder and where the dead-body of Pati was burnt. Accused Raju made disclosure statement, Ex.P12. Both the accused led the police party to the place of occurrence and pointed out both the places. IO recovered the pieces of bones and skull from the straw which were kept in a sealed parcel. Accused Raju also got recovered match box. Bones and skull were sent to the FSL. FSL report is Ex.P26. Investigation was completed and challan was put up after completion of all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, the present appeals.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned trial Court.

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

7. PW1 Paramjit Singh has prepared the site plan, Ex.P1, on 26.3.2004.

8. PW2 Ravi Sharma took the photographs of the place of occurrence.

9. PW3 Manjoor Singh is the complainant. He deposed that he had employed Mohan alias Raju as his servant. His elder brother Gurdial Singh had employed another accused Raju and Pati (deceased) as servants.

They had employed them about 5/6 months prior to the occurrence. They used to live in a *kotha* at their *Dera*. On 29.2.2004 at about 7/7.30 P.M. all the three servants went to the *Dera* of his brother-in-law Buta Singh. On 1.3.2004 at about 8.30 A.M., they saw fire in the field of Jagdish. He and his brother went to that field and found that there was fire on the *parali* lying in his fields. Cap of Mohan was lying there. Pati was found missing. Both the accused Mohan and Raju were present at the *Dera*. They made inquiries from them about Pati. They told them that on the previous night at about 8.30 P.M. when they were coming back from the *Dera* of Buta Singh, they had strangled Pati in the field of Jagdish. After murdering, his dead-body was put in the *parali* lying in the fields of Jagdish. They put his dead-body on fire. The occurrence, according to them, had happened on 29.2.2004 at about 8.30 P.M. The accused told them that about 15-20 days prior to the occurrence they had prepared the *lahan* without the knowledge of their owners. This fact came to the notice of Manjoor Singh. He destroyed the *lahan*. Pati used to tease and laugh upon them. This was the motive, which led to the murder of Pati. On the next morning i.e. on 1.3.2004 they went to the place of occurrence and found that there were some burnt human bones and skull lying in the burnt *parali* in the field of Jagdish. He made his statement, Ex.P10, to the police. He signed the same. In his cross-examination, he deposed that accused Raju was employed with his brother Gurdial Singh. He did not have the address of Pati. He did not see the fire in the night so he did not go to that place in the night. He saw fire in the morning on 1.3.2004. Accused confessed about the occurrence at about 4.00 P.M. When they visited the place of fire in the morning for the first time, they did not come to know that some dead-body was burnt in the *parali*.

There was no smell of burning of the dead-body. Jagdish also had no knowledge about the burning of dead-body.

10. Cross-examination of PW3 Manjoor Singh was deferred on 2.8.2004. It was recorded on 21.9.2004. In his cross-examination, he deposed that he did not give any information to the police against the accused. He made the statement on 2.8.2004 in the Court under the influence of the police. The Public Prosecutor had requested for cross-examination of the witness since he had contradicted his earlier statement dated 2.8.2004. He deposed that he has made the statement on 2.8.2004 under the influence of police. Accused Mohan and Raju never disclosed to them that they had murdered Pati on 29.2.2004 at 8.30 P.M. The accused had not made any extra-judicial confession before him, Buta Singh and Gurdial Singh. In his cross-examination by the learned defence counsel he deposed that the accused were innocent. He did not know with certainty as to who had prepared the *lahan*

11. PW4 Baldev Singh deposed that he was Ex-Sarpanch of Village Rattak. Nothing has happened in his presence. The accused were not interrogated in his presence on 1.3.2004. He was declared hostile and was cross-examined by the learned Public Prosecutor. In his cross-examination by the learned Public Prosecutor, he identified his signatures on the documents, Exs.P-11, P-12, P-13, P-14 and P-15. He deposed that the police had obtained his signatures on some blank papers. He denied the suggestion that on 1.3.2004 accused Mohan alias Raju and Raju were interrogated by SI Baljit Singh in his and in the presence of HC Roshan Lal. He was confronted with his statement, Ex.P16. In his cross-examination by the learned defence counsel, he denied that accused were interrogated in his

presence. Nothing was recovered from them in his presence.

12. PW5 Gurdial Singh deposed that he along with his brother and family reside at their Dera New Jinda (Rattak). He employed Raju (accused) and Pati (since deceased). They were residing happily in *Dera*. He did not know how his servant Pati was murdered or killed. His cap, skull and some bones were recovered from the heap of the *parali* lying in the field of Jagdish but he did not know whether the recovered bones and skull were of Pati. Accused and Pati had not gone to the *Dera* of his brother-in-law Buta Singh on 29.2.2004 at about 7/7.30 P.M. Accused had not made any extra-judicial confession before him, his brother Manjoor Singh and his brother-in-law Buta Singh. He was declared hostile and was cross-examined by the learned Public Prosecutor. He denied the suggestion that on 29.2.2004 at about 7/7.30 P.M. both the accused along with deceased Pati had gone to the Dera of Buta Singh. He was confronted with statement, Ex.P17. He deposed that he did not make any statement to the police.

13. PW6 Buta Singh deposed that on 29.2.2004 at about 8.30 P.M., accused Mohan alias Raju, Raju and deceased Pati had not come to his *Dera*. The accused had not made any confession regarding murder of Pati before him, Manjoor Singh and Gurdial Singh. He was declared hostile and was cross-examined by the learned Public Prosecutor. He was confronted with his statement, Ex.P18.

14. PW11 SI Baljit Singh deposed that Manjoor Singh met him near Government School Rattak. He recorded his statement, Ex.P10. FIR was registered. He recorded the statements of Buta Singh and Gurdial Singh under Section 161 Cr.P.C. Photographer was called at the spot. He took the photographs. He interrogated accused Mohan alias Raju. He made

disclosure statement, Ex.P11. It was signed by Baldev Singh, Ex.-Sarpanch and HC Roshan Lal. Thereafter, accused Raju made disclosure statement, Ex.P12. According to him, he had kept concealed one match box under the bed in his residential *kotha*. He could get it recovered. Accused Mohan alias Raju had also disclosed in his disclosure statement, Ex.P11 that his cap had fallen at the spot. Thereafter, both the accused led the police party to the place of occurrence and identified both the places. From the *parali* some bones and skull were recovered and taken into possession. Cap was also taken into possession. In his cross-examination, he admitted that no record was shown to him by the complainant about the employment of accused and the deceased. He also admitted that cap, Ex.P22, was not having any mark of identity regarding the accused concerned.

15. FSL Report is Ex.P26. According to it, the bones in exhibit-1 (Burnt bones and ashes) were identified as human bones. However, no opinion regarding sex and age could be given as the bones were too fragmentary and insufficient.

16. PW3 Manjoor Singh has supported the case of the prosecution when his examination-in-chief and cross-examination was recorded on 2.8.2004, however, his cross-examination was deferred. On 21.9.2004 he did not support the case of the prosecution at all. He resiled from his earlier statement recorded on 2.8.2004. He denied that the accused had made disclosure statements before him, Gurdial Singh and Buta Singh.

17. PW4 Baldev Singh had also not supported the case of the prosecution. According to him, nothing was recovered in his presence. He had seen the disclosure statements, Ex.P11 and Ex.P12, possession memo of cap, Ex.P13, pointing out and possession memo of bones and ashes, Ex.P14,

possession memo of the sealed parcel of match box, Ex.P15. According to him, he was not associated by the police in the investigation of the case. Accused were never interrogated in his presence.

18. PW5 Gurdial Singh, brother of complainant Manjoor Singh (PW3) has also not supported the case of the prosecution. He was declared hostile. According to him also, no disclosure statement was made before him, his brother-in-law Buta Singh (PW6).

19. PW6 Buta Singh has categorically deposed in his examination-in-chief that accused Mohan alias Raju, Raju and deceased Pati never came to his *Dera*. Accused had not made any extra-judicial confession before him.

20. PW11 SI Baljit Singh in his cross-examination admitted that no record was shown to him by the complainant about the employment of accused and the deceased.

21. Burnt bones and ashes were approximately 250 grams. According to FSL Report, Ex.P26, no opinion could be given regarding sex and age as the bones were too fragmentary and insufficient. In case the deceased had been wearing clothes, the same could have been intact with the bones. The police had not sent the bones for DNA Examination.

22. Modi in Medical Jurisprudence and Toxicology, 24th Edition, Reprint 2012, has stated that in some instances, burnt bones and ashes are forwarded to the medical officer for inspection, if the police suspect some foul play after a body is partially or completely burnt. In an ordinary house fire, the temperature seldom exceeds 1200°C. It is, therefore, unlikely that the body of an adult will burn so completely as to leave no trace. If the body is not completely consumed, fragments of bones left would afford sufficient

evidence to indicate whether they were of human or not. The combustion of a body is rarely so complete as to reduce it to ashes. Hence, by shifting the ashes through sieves, fragments of bones can be collected and identified by a careful study. Incineration of an adult human body for the purpose of cremation requires 1½ hour at 1600-1800°C, and the resultant ashes weigh about 4-6 kg. Such human ash contains bone pieces which may still be identified.

23. Even on the most badly charred body, fragments of clothing may be found protected in folds of skin or in the flexures of armpits and groins; or traces of jewellery may be found.

24. In the present case, the weight of bones and ashes was found only 250 grams. Police has not recovered any clothes.

25. The prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly, the appeals are allowed. The judgment and order of the learned trial Court are set aside. The appellants are acquitted of the charges framed against them.

26. We appreciate the assistance rendered by Mr. V. K. Sachdeva, Legal Aid Counsel, in the present set of appeals.

(Rajiv Sharma)
Judge

2.3.2020
vs

(Harinder Singh Sidhu)
Judge

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