

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

CRA-D-820-DB-2013 (O&M)

Date of Decision: 28.02.2020.

Pawan Kumar and another

...Appellants

VS.

State of Punjab

...Respondent

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan**
 Hon'ble Ms. Justice Archana Puri.

Present : Mr. K.S. Sidhu, Advocate,
 for the appellants.

Mr. A.A. Pathak, Addl. A.G., Punjab.

JITENDRA CHAUHAN.J.

1. This is an appeal against the judgment of conviction and order on sentence dated 30.05.2013 passed by Addl. Sessions Judge, SAS Nagar, Mohali, vide which the accused/appellants were convicted and sentenced under Sections 450 and 302 of the IPC in FIR No.9 dated 12.01.2012 registered under Sections 302, 382,450 read with Section 34 IPC at Police Station Zirakpur, District SAS Nagar, Mohali.

2. The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 to 4 are reproduced as under:-

“2. That on 12.01.2012 Inspector Yogi Raj SHO of Police Station Zirakpur alongwith some other police officials was present near Railway Crossing, Harmilap Nagar, Phase I, Baltana in connection with patrolling.

There, complainant Anchal Jindal along with Satnam Singh met him and made statement to the effect that she is resident of House No. 368, Harmilap Nagar, Phase I, Baltana and is studying in 10th Class. She is residing along with her younger sister Priyanka Jindal and mother Shikha Jindal. On the previous Monday, she went to Ludhiana to meet her friend. There she received a call on her mobile phone on that day at 9 PM that she should come back home as some incident has occurred. Then she along with her friend Sheeba and her father Satnam Singh son of Gurbachan Singh, resident of House No. 154, Street No.1, Sukhdev Nagar, Ludhiana reached her house at Baltana. There she saw that dead body of her mother Shikha Jindal was lying on the floor in drawing room of their house and there were sharp edge injury marks on her neck. In the outer room of their house, dead body of her sister Priyanka Jindal was lying and it appeared that she was strangulated by pressing her neck. She had firm belief that Vaneet and her father Pardeep Jindal had committed murder of her sister by pressing her neck and by causing injuries with sharp edged weapon. Motive behind the occurrence was that her father had left them about 6 months ago and had solemnized marriage with some other woman. Hence, action be taken against them.

3. This above said statement of the complainant was attested by Satnam Singh. Inspector Yogi Raj also attested the same and made endorsement thereon and sent ruqa to the police station through C. Satnam Singh for registration of FIR under Section 302/34 IPC and on its basis formal FIR was recorded. Inspector Yogi Ram himself conducted the investigation of the case. He visited the spot and prepared rough site plan of the place of occurrence.

Supplementary statement of complainant Anchal Jindal was recorded to the effect that she had got recorded her earlier statement regarding murder of her mother Shikha Jindal and sister Priyanka Jindal by meeting the police party near Railway Crossing, Harmilap Nagar, Baltana in the presence of Satnam Singh. Now she has minutely checked the dead bodies of her sister and mother. Her mother was wearing gold chain along with locket having photo of Shri Krishna, Jhumkas in her ears, nose pin of gold as well as Gajras one bangle of artificial gold. Her sister Priyanka Jindal was wearing ear rings. But these jewellery articles were not on their persons and the same had been removed by the murderer. She can identify those jewellery articles if same are produced before her. Supplementary statement of the complainant was recorded. Blood was lifted from the spot and after putting in a parcel, sealed with seal bearing impression 'YR' it was taken into possession vide a recovery memo. A Chunni of Gajri colour and a black colour cloth, which were blood stained and were lying near dead body of Shikha Jindal were also lifted from the spot. The same after converting into a sealed parcel were taken in police possession. From the spot, two used condom wrapped in newspaper lying near the wall were also lifted and after converting into a sealed parcel the same were taken in police possession. The recovery memos were attested by the witnesses. Inquest report of Shikha Jindal and Priyanka Jindal were prepared. Their dead bodies were identified by Kuldeep Kumar and Ramesh Kumar, whose statements were recorded. Photographs of the place of occurrence were taken. The spot was investigated minutely. A black coloured wallet was found lying behind the door of latrine

bathroom, which contained Student Identity Card of Pawan Jangra son of Suresh Jangra, resident of House No. 213, Behlana; Registration Certificate of motorcycle bearing No. HR-03-C-4575 in the name of Pankaj Attri, resident of House No. 1115, Sector 15, Panchkula, three photographs i.e. one photograph of a young person and two photographs of another young person. These articles were also taken into police possession vide a recovery memo. Dead bodies of Shikha Jindal and Priyanka Jindal were sent for post mortem examination to Civil Hospital, Dera Bassi through HC Major Singh. After seeing photographs, Student Identity Card and Registration Certificate of the motorcycle, Kuldeep Kumar uncle of the complainant made statement to the effect that his brother Pardeep Kumar was resident of House No. 362, Harmilap Nagar, Phase I, Baltana along with his family comprising of his two daughters Priyanka Jindal and Anchal Jindal. His wife Shikha Jindal was running the grocery shop on ground floor of their residence. Pardeep Kumar was doing the business of transport at village Darba, near Railway Station, Chandigarh. About six months ago, the relationship of Pardeep Kumar with his wife became strained and he started living separately. Shikha Jindal was living along with her two daughters separately. In order to resolve their dispute, he went to meet Shikha Jindal on 12.01.2012 at 1.30PM and she asked him to bring Pardeep Kumar to her house on the next day in order to resolve their dispute. After talking to Shikha Jindal, he left her house. Priyanka Jindal was sitting in the shop at that time. Two young boys of age about 20 years having fair complexion came at her shop on motorcycle No. HR-03-C-4575 and demanded some goods from

Priyanka Jindal. As he was in hurry, so he went to his house. Now he has seen black color wallet recovered from behind the door of bathroom containing Student Identify Card in the name of Pawan Jangra, Registration Certificate of the motorcycle and three photographs. Out of the said three photographs, two photographs are of one boy and one photograph is of another boy. He had seen those boys on 12.01.2012 at 1.30 PM on the shop of Priyanka Jindal. He identified the photographs of the said boys and he can identify them if they are produced before him. He has firm belief that Shikha Jindal and Priyanka Jindal have been murdered by said boys in order to commit the theft of jewellery. He further stated that on previous day he saw Gajras in the hands, gold chain along with locket around neck, Jhumkas in the ear and nose pin in nose of Shikha Jindal. Priyanka Jindal was also wearing ear rings. These articles of jewellery have been removed by the murderers after committing their murder. Anchal Jindal complainant has got recorded Pardeep Kumar and his acquaintance Vaneet as suspects in her statement made to the police due to matrimonial dispute and actually they are not culprits.

During investigation, site plan of the place of occurrence was prepared. Statements of the witnesses were recorded. As per identity card and photographs, search of the accused was conducted. After conducting post mortem examination on the dead bodies from Civil Hospital, Dera Bassi, post mortem reports along with sealed parcels were produced by HC Major Singh. As per Dr.Sangeeta Jain, these sealed parcels were sent to the Chemical Examiner, and Forensic Science Laboratory. These parcels sealed by the doctor were taken into police possession vide recovery

memo attested by witnesses. The case property was deposited with Gurmail Singh MHC. On 17.01.2012, the IO along with his police party and Ramesh Kumar maternal uncle of the complainant was holding Nakabandi at Lohgarh turn, Zirakpur. There accused Pawan Kumar and Arun Kumar came on motorcycle No. HR-03-C-4575 from Patiala side. They were signaled to stop, but they tried to fled away. They were apprehended by the members of the police party. On enquiry, the motorcycle driver disclosed his identity as accused Pawan Kumar and pillion rider disclosed his identity as accused Arun Kumar. They were confronted with Student Identity Card, photographs and Registration Certificate of the motorcycle recovered from the spot. Accused Pawan Kumar confessed his guilt and made disclosure statement regarding possession of knife used to slit the neck of Shikha Jindal and jewellery removed from her body. Accordingly, his statements under Section 27 of the Evidence Act were recorded, which were attested by witnesses. Accused Arun Kumar also made disclosure statement regarding possession of Chunni used to press the neck of Priyanka Jindal and jewellery removed from her body. His statements under Section 27 of the Evidence Act were also recorded, which was attested by witnesses. Site plan of place of arrest of the accused was prepared. Motorcycle recovered from their possession, was also taken into police possession vide a recovery memo. As per his disclosure statement, accused Pawan Kumar got effected recovery of blood stained knife from the heap of bricks lying by the side of the wall of tubewell room in a vacant plot near Dushera market, Baltana. Blood stained knife was converted into a sealed parcel and was taken into police possession vide recovery memo. Site plan of the

place of recovery was prepared. Further as per his disclosure statement, accused Pawan Kumar got effected recovery of jewellery articles from an Attachi case kept near the bed room of his house No. 786, Saini Vihar, Phase II, Baltana. These jewellery articles were identified by Ramesh Kumar maternal uncle of the complainant to be of Priyanka Jindal and Shikha Jindal. These articles of jewellery were converted into a sealed parcel and were taken into police possession vide a recovery memo. Site plan of the place of recovery was prepared. As per his disclosure statement, accused Arun Kumar got effected the recovery of magenta colour Chunni, wherein chain of gold and two Gajras of artificial gold were kept lying in the left side of box bed in bed room of his house No. 136, Anand Vihar, Baltana. These articles were identified by the complainant to be of her mother and sister. These articles were converted into sealed parcel and were taken into police possession vide a recovery memo. Site plan of the place of recovery was prepared. Seal after use was handed over to ASI Anoop Singh. Statements of witnesses were recorded. On reaching the police station, the case property was deposited with HC Gurmail Singh. The accused were put up in the lock up. They are got medically examined on 18.01.2012. On 17.01.2012, the sealed parcels were sent to the Chemical Examiner and Forensic Science Laboratory (hereinafter referred as the FSL). Blood stained articles were found to be stained with human blood by the FSL. Regarding Registration Certificate of the motorcycle recovered from the accused and identity card of the accused, statements of witnesses were recorded. Scaled map of the place of occurrence was prepared by Baljinder Singh Draftsman. Statements of remaining witnesses were

recorded. The offence was found to have been committed by accused Pawan Kumar and Arun Kumar, whereas Pardeep Kumar and Vaneet were found to be innocent. ON completion of investigation, final report under Section 173 of the Code of Criminal Procedure against the accused was presented in the court.”

3. After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC was exclusively triable by Court of Session, the case was committed to the said Court.

4. Charges under Sections 302, 450 read with Section 34 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

5. In order to prove its case, the prosecution had examined Ved Parkash as PW1, Ravi Sharma as PW2, Kuldeep Kumar as PW3, Satnam Singh as PW4, Ajay Kumar as PW5, Pankaj Attri as PW6, Anchal Jindal, complainant as PW7, Dr. Barinder Singh, as PW8, Dr. Sangeeta Jain as PW9, Baljinder Singh as PW10, Ramesh Kumar as PW11, HC Major Singh as PW12, Inspector Yogi Raj, I.O. As PW-13, HC Gurmail Singh as PW-14, Dr.Jaideep Singh as PW-15, HC Rameshwar Dass as PW-16, ASI Anoop Singh as PW-17 and Constable Harkesh Kumar as PW-18. Learned Public Prosecutor closed the evidence of prosecution.

6. The statements of accused persons under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused persons to which they denied and pleaded false implication.

7. The accused in their defence evidence examined Rajinder Singh SDE of BSNL, Sector 34, Chandigarh as DW1, Sapna Saini as DW2, S.P. Jain, Nodal Officer of Bharti Airtel Limited as DW3 and Suresh Chander as DW4. Accused thereafter closed their defence evidence.

8. After appraisal of evidence, the learned trial court vide impugned judgment dated 30.05.2013 convicted for the offence punishable under Sections 450 and 302 of the IPC and were sentenced as under :-

Name of the convict	Convicted under Section	Sentence imposed	In default of payment of fine.
Pawan Kumar	450 IPC	Rigorous imprisonment for the period of seven years and fine of Rs.5,000/-	Further rigorous imprisonment for three months
	302 IPC	Rigorous imprisonment for life and fine of Rs. 10,000/-	Further rigorous imprisonment for six months
Arun Kumar	450 IPC	Rigorous imprisonment for the period of seven years and fine of Rs.5,000/-	Further rigorous imprisonment for three months
	302 IPC	Rigorous imprisonment for life and fine of Rs. 10,000/-	Further rigorous imprisonment for six months

9. Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the accused persons.

10. We have heard the learned State counsel and have gone through the case file very carefully.

11. The crucial evidence in the instant case is the recovery of the wallet of the accused with the Registration Certificate of the motorcycle owned by him along with three photographs including the photograph of the co-accused. On 17.01.2012 the Investigating Officer diverted the course of investigation from the persons named in the FIR

to the accused. It is interesting to note that there is no investigation and application of mind by the prosecution as to why the accused named in the FIR were not interrogated. It would have been a different situation if after interrogation named persons in the FIR the report is prepared which rules out the possibility of their involvement or else they ought to have been kept in column No.2 of the challan. Both the above courses were not adopted by the Investigating Officer. It is also not explained as to why the wallet which was recovered from behind the door on 13.01.2012 was not recovered from the place of occurrence on the day i.e. 12.01.2012 when the bodies were removed. No plausible explanation has come on record for the change of stance by the complainant. We feel that on the strength of the recovery of a wallet alone, the conviction can not be allowed to sustain, the court is convinced that the true genesis of the crime have not come on record. We strongly feel that the investigation is tardy and the best evidence has been withheld from the Court.

12. The stand of DW-2 Sapna Saini who is neighbour of appellant Pawan Kumar appears to be probable and inspire confidence that the appellant had some altercation with the police. Further at the time of recovery, despite the presence of Sheeba and her father Satnam Singh on the spot, they were not joined in the recovery proceedings. PW-3 Kuldeep Kumar, who is the witness of the last seen is unreliable, since he testified to have seen the appellants at 1:30 p.m. when they had allegedly come to purchase some articles from his sister-in-law

Priyanka Jindal. Though he has identified the appellants in the Court to be the same persons, the shop is in the main market and is a busy place, the complainant had received the telephone call at 9:00 p.m. What had happened between 1:30 p.m. to 9:00 p.m. is still a mystery. PW-3 Kuldeep Kumar has deposed that since he was in a hurry, he had left the place at 1:30 p.m.. The prosecution was required to adduce cogent and convincing link evidence to connect the appellants with the alleged offence.

13. Mere suspicion howsoever grave, cannot take the place of proof. *In Padala Veera Reddy v. State of A.P. And Ors., 1990(2) RCR (Criminal) 26*, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else: and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

14. The learned trial Court has observed the following on the issue of last seen evidence and the recoveries of the articles effected from the accused in pursuance of the disclosure statement :-

“43. “So, after carefully considering the above discussed evidence led by the prosecution, I have reached at the considered opinion that the prosecution by leading last seen evidence; recovery of articles belonging to accused from the place of occurrence; recovery of articles belonging to deceased and weapon of offence from the accused and presence of six days old injuries on the person of accused on 18.01.2012, has succeeded in proving that all these circumstances lead to conclusion that it were accused who committed house trespass by entering into the dwelling house of deceased Shikha Jindal in order to commit the offence of murder and there they committed murder by intentionally causing the death of Shikha Jindal and her daughter Priyanka Jindal. In a case based on circumstantial evidence to convict the accused, the test laid down is that the circumstances from which an inference of guilt is said to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused and the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; that circumstantial evidence must be complete and capable of explanation of any other hypothesis than that of the guilt of the accused; the circumstantial evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence. In this case circumstantial

evidence led by the prosecution is unerringly pointing towards the guilt of accused and the circumstances, taken collectively are incapable of explanation on any reasonable hypothesis save that of the guilt of accused. Therefore, both the points of determination are decided in favour of the prosecution.

44. *In view of the above discussion, accused Pawan Kumar and Arun Kumar are held guilty of the charge framed against them and are convicted for having committed offence punishable under section 450 and 302 of the IPC. Let they be heard on quantum of sentence.*

15. In the instant case, the link evidence is missing. When we examine the totality of the circumstances, statement of PW-3 Kuldeep Kumar does not inspire the confidence of the Court. The case of the prosecution has become doubtful.

16. Consequently, the appeal by the accused/appellants is accepted and the impugned judgment and order dated 30.05.2013 passed by Addl. Sessions Judge, S.A.S. Nagar, Mohali have been set aside. Accused/ appellant, Pawan Kumar and Arun Kumar are acquitted of the charges framed against them.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

28.02.2020.

Satyawan

Whether speaking/reasoned : Yes
Whether reportable : No