

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

(i) Crl. Appeal No.D-23-DB of 2014

Sonu

...Appellant

VERSUS

State of Haryana

...Respondent

(ii) CrI. Appeal No.D-647-DB of 2015

Kewal @ Kawal

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: February 24, 2020

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Ankur Lal, Amicus Curiae
for the appellant (in CRA No.D-23-DB-2014).

Mr.Rishav Jain, Advocate
for the appellant (in CRA No.D-647-DB of 2015).

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the twin appeals, is to the judgment of conviction and order of sentence dated 29.10.2013 passed by learned Addl. Sessions Judge, Panipat, vide which the appellants were held guilty and convicted

and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
302 read with 34 IPC	Imprisonment for life	₹10,000/-	RI One year
201 read with 34 IPC	RI for seven years	₹5,000/-	RI six months
364 read with 34 IPC	RI for ten years	₹5,000/-	RI six months
392 read with 34 IPC	RI for seven years	₹2,000/-	RI three months
397 read with 34 IPC	RI for seven years		

All the sentences were ordered to run concurrently.

The background facts in nutshell are, as herein given:-

That, on 11.03.2012, SI Mastana along with other police officials, was present at Sugar Mill, Gohana Road, Panipat, in connection with patrol and crime detection duty. Complainant Satbir Singh met SI Mastana there and moved an application for initiation of action, wherein, it was stated that on 09.03.2012, at about 6.30 p.m., he received a telephonic call on his mobile no.98132-56988 from the mobile phone no.94666-22040 of his brother Dalbir, thereby apprising him that he will start from CBI, Delhi, as he is serving in CBI, Delhi. Even, Dalbir Singh has asked the complainant to drop him at Israna on motor cycle, as he will be late. Then, a call from his brother Dalbir was received at about 10.30 p.m., thereby stating that he is standing at Gohana turn, Panipat, in wait of vehicle. Thereafter, he (complainant) after ten minutes had made a phone call to his brother and then his brother had disclosed that he boarded a car and the car belongs to a person of Gagsina and he will come alongwith them. Thereafter, complainant made a call, after about 30 minutes, on the mobile phone of his brother, but there was no response. Thereafter, the complainant searched for his brother but his whereabouts were not known.

As per the complainant, his brother was kidnapped by some unknown persons, with intention to demand money.

On the application, endorsement was made by the Investigating Officer and FIR was registered under Section 364-A IPC. During the course of investigation, on 16.03.2012, dead body of Dalbir Singh was recovered from the canal Dhodhpur Branch. Thereupon, addition of offence under Section 302 IPC was made. Inquest proceedings were conducted and even, postmortem examination of the dead body was got conducted. During the course of investigation, accused Sonu and Kewal @ Kawal were arrested.

On completion of investigation, report under Section 173 Cr.P.C. was presented against both the accused.

After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed under Sections 120-B, 364 read with Section 120-B, 302, 201, 392 and 397 read with Section 34 IPC, against both the accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 16 witness, besides adducing documentary evidence. The witnesses so examined by the prosecution are namely **PW-1 Mool Chand, PW-2 SI Gauri Dutt, PW-3 Jagbir Singh, Draftsman, PW-4 Satbir Singh, complainant, PW-5 EHC Jawahar Lal, PW-6 ASI Krishan Kumar, PW-7 PSI Mastana, PW-8 ASI Jasmer Singh, PW-9 ASI Balwan Singh, PW-10 EASI Shri Niwas, PW-11 ASI Sat Narain, PW-12**

Kumar, PW-15 Rakesh, Record Keeper and PW-16 Partap Singh.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their respective statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence and false implication. However, accused did not lead any evidence in defence.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide impugned judgment, both the accused were convicted and sentenced, as detailed in the earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants have filed the respective appeals.

We have heard learned counsel for the appellants and learned State counsel and have perused the trial Court record.

At the very outset, learned counsel for the appellants, in unison, have submitted that there is no direct evidence vis-a-vis murder of Dalbir Singh, coming on record, but however, prosecution banks upon the circumstantial evidence, to establish the complicity of the appellants, in causing death of Dalbir Singh. However, it is pointed out that chain of circumstantial evidence does not stand completed and precisely, on this account, the prosecution has miserably failed to proved its case to the hilt. It is further pointed out that the prosecution banks upon the last seen theory by way of examining PW-16 Partap Singh, but however, from the cross-examination of said witness, it stands amply established that last seen theory, so built through said witness, is false one and inflated version, so

coming forth and same does not inspire confidence. Also, it is further

submitted that in the light of the same, various other circumstances, so relied upon by the prosecution, also falls flat and therefore, prosecution version, as such, cannot be termed to be free from doubt. Thus, a prayer has been made by learned counsel for the appellants, for acceptance of the appeals and to set aside the impugned judgment of conviction and order of sentence, so imposed upon the appellants.

On the contrary, learned State counsel has refuted the claim of the appellants. It has been submitted by learned State counsel that even though, there is no direct evidence vis-a-vis murder of Dalbir Singh, coming on record, but however, the circumstantial evidence, brought on record, so establish the complicity of both the accused. The entire chain of circumstantial evidence completely stands linked to both the accused, which unerringly point the needle of guilt towards them. He has pointed out various circumstances, spelt in the evidence, relating to last seen, making of disclosure statements, recovery of weapons, on the basis thereof and even, the recovery of ATM of the deceased and more particularly, demarcation of three places, at the instance of the accused. In the light of the same, it is submitted by learned State counsel that learned trial Court has appraised the evidence in correct perspective and has rightly passed the verdict of conviction and imposition of sentence is also just and reasonable. Thus, learned State counsel has made a prayer for dismissal of the appeals.

So far as, fact of death of Dalbir Singh is concerned, the same stands established from the testimony of PW-12 Dr.Vikas Moudgil, who along with Dr.S.K.Gupta and Dr.Sanjeev Gupta, had conducted postmortem examination, on the dead body of Dalbir Singh and proved the postmortem

report Ex.PAA. He opined that the cause of death in this case is due to

hemorrhage and shock due to head injury, which is antemortem in nature and sufficient to cause death in ordinary course of nature. As such, the fact of death of Dalbir Singh, stands amply established.

There is no direct evidence qua murder of Dalbir Singh. However, to establish the incriminating role of the accused, the prosecution relies upon circumstantial evidence.

Before proceeding further, to the factual and evidential appraisal, in the case in hand, it is important to make mention about the manner of appraisal of evidence, in a criminal trial. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of “**may be true**” but has to essentially elevate it to the grade of “**must be true**”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion, do not take the place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. At the same time, also one has to consider that primary postulation in criminal jurisprudence is that, if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted. Very close to the same, there has to be underlying string running throughout about the inalienable interface of presumption of innocence and the burden of truth, in a criminal case, which is always on the prosecution.

Where there is no direct evidence, the Court should draw an inference, whether or not the incriminating facts and circumstances are

found to be totally incompatible, with the innocence of the accused. Of course, the circumstances, from which, an inference, as to the guilt is drawn, have to be proved, beyond reasonable doubt and shown to be connected with the principal facts, sought to be inferred from those circumstances. The circumstances, so spelt out, should not permit the Court to arrive at any other inference, but one indicating the guilt of the accused.

In this backdrop, now adverting to the case in hand. At the very outset, it should be noted that there is no direct evidence vis-a-vis murder of deceased Dalbir Singh by the accused persons. As per version of the prosecution, deceased Dalbir Singh on 09.03.2012 was lastly seen by PW-16 Partap Singh with the accused persons Sonu and Kewal @ Kawal. Throughout the arguments, much emphasis has been laid upon said witness, so examined by the prosecution. PW-16 Partap Singh, while in the witness box, has categorically stated that he is working as Generator Repairer at Israna. On 09.03.2012, he had come to Panipat for his personal work (generator repair) at Khanna Road, Panipat. At about 10.30 p.m., he was present at Gohana Road, Panipat, where a car bearing No.HR-10G-7171 was parked. On the driver seat, Sonu r/o Naultha was sitting and on the back seat, a young boy having long hair was sitting. Sonu asked him to go to Israna with them, upon which he (this witness) replied that he would stay with his relative at Khanna Road, Kishanpura, Panipat. In the meantime, Dalbir Singh s/o Dhan Singh, who was working in CBI, came there and they (Sonu and other boy) took away Dalbir Singh from Panipat, in the said car. This witness further deposed that on the next day, he left for Panipat for personal work. Thereafter, on 12.03.2012, when he came to his village,

then he came to know that Dalbir Singh had not reached his house. He

entertained doubt that the occupant of the car had done something wrong with Dalbir Singh as he left in car bearing registration No.HR-10G-7171 on 09.03.2012. He also deposed that on that very day, he had made statement to the police. However, said witness, though, has deposed in consonance with the prosecution version, in his examination-in-chief but however, he could not withstand test of credibility, while facing cross-examination. The whole version of the last seen theory, so set up in examination-in-chief, stands demolished in his cross-examination. From the cross-examination of the said witness, it is clear that deceased was his brother in his relations and they belong to different families. The deceased and the said witness belong to same caste. Also, in cross-examination, he stated that he knew Sonu prior to the occurrence in question. In the light of the same, it is pertinent to mention that the said witness in the cross-examination, stated that he came to know on the next day i.e. 10.03.2012, regarding missing of deceased Dalbir in the night. He searched for the deceased alongwith his brothers and parents. Further, he stated that on 11.03.2012, he and family members of the deceased Dalbir, searched at Panipat. Further, he also stated that FIR of the present case was lodged on 10.03.2012 and it was got registered by Satbir, the brother of deceased. He also deposed that he searched the deceased on 11.03.2012 along with Satbir. He remained with Satbir full day on 11.03.2012. He further admitted to be correct that he remained with Satbir on 11.03.2012 for whole day. Also, he stated that he remained with the family members of the deceased in search of the deceased, since morning of 11.03.2012 upto 16.03.2012. His statement was recorded by the police on 12.03.2012. Furthermore, he had stated that he visited police station 8-10 times and he had seen the accused, present in the Court, in the

police station. SI Mastana showed the accused to him in the police station. He also stated in the later portion of the cross-examination, that he did not tell anybody, after the occurrence and prior to 12.03.2012, regarding the deceased, about his last seen in the company of the accused. This entire cross-examination demolishes the assertion, so made by the said witness, in his examination-in-chief, about having gone away from Panipat, on the next day of 09.03.2012 and then returned back on 12.03.2012 and then on his return, he came to know that Dalbir Singh had not reached his home. As already detailed aforesaid, in the cross-examination, the said witness has categorically stated about being in the company of the family members of the deceased and even, with complainant Satbir, from 10.03.2012 onwards till 12.03.2012. If it be so, it is highly improbable that deceased would maintain so much silence and will not open his mouth, relating to the deceased last seen alive in the company of accused. Thus, in the given circumstances, only inference, which can be drawn, is about said witness, to have been padded in by the prosecution, to inflate the prosecution version vis-a-vis the last seen theory. Thus, this circumstance, so relied upon by the prosecution, as such, is discarded.

In view of the same, prosecution further relies upon disclosure statement Ex.PA/11 and Ex.PA/12, suffered by them in case bearing FIR No.384 dated 11.03.2012, regarding their involvement in the commission of the murder of deceased and throwing the dead body in the canal, after giving him injuries and further about demarcation of three places i.e. first where they had given lift to deceased Dalbir; second where they had abducted deceased Dalbir and tied his hands and third place, where they

murdered Dalbir Singh and threw his dead body. Apart from it, the

prosecution has also relied upon the disclosure statement made by Sonu and Kewal @ Kawal, on the basis whereof, iron *dao* and ATM card of the deceased, as such were recovered from Kewal @ Kawal and Sonu. However, it is pertinent to mention that even though, it is the version of the prosecution about the disclosure statements, so to have been made by the accused and on the basis thereof, recoveries, as such, had been effected but however, despite availability, no independent witness, as such, has been associated in the investigation of the case, more particularly, when police party had gone to the house of Sonu and qua accused Kewal @ Kawal, when the recovery had been effected from the open place and when there was no dearth of availability of people in the vicinity. It is true that testimonies of the police officials, who were associated, at the time of disclosure so made and the recoveries having effected, as such, cannot be completely discarded, simply because public witnesses have not been associated but however, the evidence of the official witnesses, in such circumstances, when the last seen theory has been disbelieved, have to be weighed and tested, more particularly, when the accused, as such, are claimed to have made disclosure statements in the other FIR. The recovery of weapon of offence, can only be taken as corroborative evidence, provided there is some material evidence, to connect the accused with the commission of crime, which is not there.

Now, it is important to make reference to the testimony of PW-12 Dr.Vikas Moudgil, who being member of Board of Doctors, had conducted postmortem examination, on the dead body. Though, the said witness has deposed about conducting of the postmortem examination and

detail of the injuries, but when the sealed parcel containing weapon of

offence was opened and weapon was shown to the said witness, he opined that possibility of the injury mentioned in the postmortem report of Dalbir Singh, cannot be ruled out, by that weapon. On seeing *dao*, he stated that possibility of injuries, as mentioned in the postmortem report, could be caused with the help of this weapon. However, in cross-examination, the said witness has stated that possibility of present injury on the head of the deceased, could be caused by another weapon, which also cannot be ruled out. Possibility of such type of injury by other blunt weapon, cannot be ruled out. In the light of the same, it cannot be concluded with certainty about the weapon, so relied upon by the prosecution, is the only weapon of offence.

Besides the aforesaid, also it is submitted that human hair were recovered from the car bearing registration No.HR-10G-7171, in this regard, reference, has been made to the FSL report **Ex.PX**. Further, it is pertinent to mention that after examination, it was deposed that hair in exhibit-10 (Hair) were examined morphologically and microscopically and were found to be human in nature. Besides the same, there is nothing, as such, coming on record, about the connectivity of hair, with either the deceased or accused. In the light of the same, the finding of human hair, as such, also do not sufficiently connect the accused with the occurrence in question.

In the light of the aforesaid discussion, considering the last seen theory, so padded in by the investigation to inflate the prosecution version, it is evident that there are yawning gaps, coming forth in the chain of circumstantial evidence, attempted to be completed by the prosecution, to nail down the accused. However, on appraisal, the evidence, so brought on

being probable, which definitely creates a doubt. Though, some circumstances, as pointed out aforesaid, may point finger of suspicion towards the accused, but this suspicion, in any case, is not strong enough and is not established to take place of proof. Thus, the chain of circumstantial evidence is not complete and precisely, on this account, the version of the prosecution, cannot be termed to be free from doubt. Resultantly, the benefit of this doubt, ought to be extended to the accused.

As such, we find merit in both the appeals filed by the appellants and the same are allowed. The impugned judgment of conviction and order of sentence dated 29.10.2013 passed by learned Additional Sessions Judge, Panipat, is set aside and accused/appellants Kewal @ Kawal and Sonu are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

February 24, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No