

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

Crl. Appeal No.D-780-DB of 2015 (O&M)
Date of Decision: February 24, 2020

Kewal ...Appellant

VERSUS

State of Haryana ...Respondent

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

Present: Mr.Rishav Jain, Amicus Curiae
for the appellant.

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

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 12.09.2014 and order of sentence dated 16.09.2014 passed by learned Addl. Sessions Judge, Panipat, vide which the appellant was 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	₹25,000/-	
201 read with 34 IPC	RI for seven years	₹10,000/-	RI one year
364 read with 34 IPC	RI for ten years	₹10,000/-	RI one year
382 read with 34 IPC	RI for ten years	₹5,000/-	RI one year
120-B read with 34 IPC	RI for three years	₹5,000/-	RI six months

All the sentences were ordered to run concurrently.

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

That, on 29.02.2012, ASI Surjeet Singh, was present at police post, then complainant Meenu had filed application wherein, she had stated about her husband Chander Parkash to be employed as A.A.O. in LIC Office and he was transferred from Panipat to Jaipur. He had got reserved seat no.68 of Gareeb Rath, (train for 3rd AC for Jaipur from Panipat), which was scheduled to be departed at 11.38 p.m. On 27.02.2012, her husband had left for Railway Station, Panipat at 10.25 p.m., while on foot. However, he neither reached Jaipur nor he returned back home. His mobile phone bearing SIMs No.8053504282 and 09602803442 were found switched off. The complainant had got lodged DDR No.9 dated 28.02.2012 with Police Post, Sector 29, Panipat with regard to missing of her husband. On that day, she alongwith her brother-in-law Narender Makhija got checked the account no.82052010008418 of husband relating to Syndicate Bank and found three withdrawal transactions made through ATM card. She got checked the footage of ATM, with the help of police and some other person was found withdrawing the cash. As such, in the application, the complainant had asserted that her husband has been kidnapped and the cash has been got withdrawn forcibly from him. She made prayer for legal action.

Thereupon, case under Section 365 IPC was registered. During the course of investigation, on 01.03.2012, the account of Chander Parkash relating to Syndicate Bank, G.T.Road, Panipat was got checked and it was found that on 28.02.2012, a sum of ₹10,000/- was withdrawn from the ATM of Axis Bank, while sums of ₹10,000/- and ₹5,000/- were found to have been withdrawn from ATM of Bank of India, G.T.Road, Panipat. The check

camera of ATM, were taken into custody by the police. The photographs of CCTV camera of ATM of Bank of India were taken into pen drive and were taken into custody by police, vide separate memo. The footage of ATM of Bank of India depicted a young person withdrawing cash from ATM. A sum of ₹5,000/- and ₹10,000/- were withdrawn from the account of Chander Parkash of this bank, bearing no.82052010008418. The said amount was withdrawn by young person on 28.02.2012, who was later on identified as Sonu.

Also, it is the claim of the prosecution that during the course of interrogation of case FIR No.384 dated 11.03.2012 under Sections 307, 332, 353, 186 IPC and 25 Arms Act, accused Kewal and Sonu suffered disclosure statements vis-a-vis the present case. Thereupon, EHC Phool Kumar and heirs of Chander Parkash Makhija were dispatched to Delhi Canal for search of Chander Parkash, whose dead body was found in Kakroi Head Pai Branch Canal, which was identified by heirs of the deceased. Postmortem examination on the dead body was got conducted and thereupon, addition of offence under Sections 302 and 34 IPC was made.

The arrest of the accused effected on 14.03.2012, whilst they were in custody in case FIR No.246 of 2012 under Sections 392 and 394 IPC, Police Station Chandni Bagh.

While in police custody, during the course of interrogation, on 15.03.2012, accused Kewal and Sonu suffered disclosure statements vis-a-vis occurrence of the present case. Thereupon, accused Sonu got recovered one bag, T-shirt, shoes, cash amount of ₹1100/-, one shirt and two pants and the same were taken into possession by separate memo. At the instance of

purse having currency notes of ₹900/-, were got recovered, which were taken into possession vide separate memo. Even, both of them demarcated the places, they gave lift to Chander Parkash, snatched cash and ATM card and threw him in canal, after having committed his murder. Separate memos relating to the same were prepared and addition of offence under Section 120-B IPC was made. Various other proceedings were conducted, during the course of investigation.

On completion of investigation, challan was presented against both the accused.

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

On the basis of material coming forth, charge was framed under Sections 120-B, 364, 382, 302 and 201 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 24 witnesses, besides adducing documentary evidence. The witnesses so examined by the prosecution are namely **PW-1 Meenu Makhija, complainant, PW-2 Sushil Kumar, PW-3 Daya Chand, Bank Manager, Syndicate Bank, PW-4 Daya Ram, Senior Manager, Bank of India, PW-5 Rajat Singla, Manager, Axis Bank, PW-6 Constable Parveen Kumar, PW-7 Ved Parkash, Patwari Halqa, PW-8 Constable Jai Narain, PW-9 Dilip Gidwani, PW-10 SI Dharambir (Retd.), PW-11 EASI Ram Rattan, PW-12 Dr.Ashish Tyagi, PW-13 ASI Surjit Singh, PW-14 Mange Ram, PW-15 ASI Jasmer Singh, PW-16 Constable Balwant Singh, PW-17 ASI Satnarain, PW-18 SI Surender Singh, PW-**

PW-22 ASI Dharam Pal (Retd.), PW-23 SI Narender Kumar and PW-24 ASI Suresh Kumar.

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, appellant-Kewal has filed the present appeal.

Even trial Court record was requisitioned.

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

At the very outset, learned counsel for the appellant, has emphatically submitted that there is no eye witness to the occurrence in question and in the light of the same, the prosecution banks upon the circumstantial evidence. However, it is pointed out that circumstantial evidence, so relied upon by the prosecution, do not stand sufficiently linked to the appellant. In fact, it is submitted that the evidence, so brought on record, falls short of the legally prescribed standards, to return a finding of guilt, on the basis thereof. Learned counsel for the appellant, has very painstakingly drawn our attention to the various aspects of the case, which

been pointed that though, death of Chander Parkash, as such, has occurred in the present case but however, no sufficient evidence has been led by the prosecution to establish sufficient connectivity of the appellant with the occurrence in question. In fact, he submitted that appellant, as such, had made disclosure statements vis-a-vis the occurrence in question, during the course of investigation of the case bearing FIR No.384 dated 11.03.2012. However, the disclosure statement, as such, cannot be termed to be free from doubt, as no independent witness, despite there being no dearth of availability, had been associated. Not only this, also it has been submitted that even no independent witness has been thereafter associated, while conducting investigation of the present case. In the light of the same, a prayer has been made for acceptance of the appeal and to record acquittal of the appellant-Kewal.

On the contrary, learned State counsel has refuted the claim of the appellant. In fact, it is submitted by learned State counsel that though, there is no direct evidence vis-a-vis murder of Chander Parkash, coming on record, but however, the circumstantial evidence, brought on record, does amply establish the complicity of the appellant, in causing the murder of Chander Parkash and throwing away his dead body, so as to cause disappearance of the evidence qua commission of crime. It is pointed out that the chain of circumstantial evidence, has been completely linked to the appellant, which unerringly point the needle of guilt towards him. It is further pointed out that various circumstances, spelt out in the evidence, relating to disclosure statement made by the accused in case FIR No.384 dated 11.03.2012 and also making disclosure statement, on the basis

appellant Kewal from the disclosed spot. It is further submitted that withdrawal of the amounts by appellant Kewal along with his fellow accused, while using ATM card, also stands amply established. Even, throwing of dead body into the canal and recovery of the same, on his disclosure, also establish about the connectivity of appellant Kewal with the death of Chander Parkash. Thus, summing up his arguments, learned State counsel has made a prayer for dismissal of the appeal.

Undisputedly, in the case in hand, there is no direct evidence vis-a-vis murder of Chander Parkash, coming on record. In the light of the same, the prosecution banks upon the circumstantial evidence, to establish the guilt of the accused.

So far as, factum of death of Chander Parkash is concerned, the same stands amply established from the testimony of PW-12 Dr.Ashish Tyagi, who has deposed about having conducted postmortem examination, on the dead body of Chander Parkash along with Dr.Pawal Mittal. He also tendered into evidence, his affidavit Ex.PW12/A, thereby giving details of injuries, found on the dead body and also proved postmortem report, which is Ex.P20, wheel panna is Ex.MO/5, reports of FSL, Madhuban, are Ex.PX to Ex.PX/3. In the postmortem report, it is submitted that cause of death was **cranio cerebral injuries consequent to injuries described above and their complications which were ante mortem in nature, homicidal in manner and caused by hard blunt force impact. However, viscera had been preserved for chemical analysis for detection of any stupefying agent and bones for detection and comparison of diatoms.**

After receipt of the report of FSL, it was opined that deceased

Chander Parkash had been murdered prior to throwing him in the water. In

the light of the evidence, so coming forth, the fact of death of Chander Parkash, as such, stands amply established.

Now to establish the incriminating role, the prosecution heavily relied upon the disclosure statement made by appellant Kewal in case FIR No.384 dated 11.03.2012 under Sections 307, 332, 353, 186 IPC and Section 25 of the Arms Act. To so substantiate this version of the disclosure statement, so made, by the appellant, the prosecution has examined PW-23 SI Narender Kumar, who has proved the disclosure statement made by accused Kewal **Ex.P69**. Besides the said witness, the prosecution has examined PW-21 ASI Balwan Singh, who is attesting witness to the said disclosure statement, so made. It is pertinent to mention that in the aforesaid disclosure statement, so relied upon by the prosecution, there is mention of causing of the occurrence, on the intervening night of 27/28.02.2012 and there is also mention of the withdrawal of amount of ₹15,000/- from the account of Kotak Mahindra Bank. It is pertinent to mention that nowhere, it is the version of the prosecution about the deceased to be having account of Kotak Mahindra Bank. Even, it should be noted that said disclosure statement has been witnessed by police official ASI Balwan Singh No.50 and HC Kuldeep No.935. Further, it is the version of the prosecution that on 15.03.2012, in pursuance of the arrest having effected in the present case, again during the course of interrogation, in the police station Chandni Bagh, accused Kewal suffered disclosure statement **Ex.P38**, wherein, he disclosed about his participation in various incidents, which also includes the occurrence of the present case. It is also the version of the prosecution that on the basis of disclosure statement,

wheel panna, ₹900/- and one purse and the same were taken into possession, vide memo Ex.P44. It is further claim of the prosecution that on the same day, appellant Kewal also demarcated the place, where he has looted Chander Parkash along with fellow accused Sonu, by tying his hands as well as the place, where they had thrown Chander Parkash in the canal, after committing his murder and the memo relating to the same are Ex.P41 and Ex.P42. It is pertinent to mention that in the said disclosure statement, there is mention made that earlier disclosure statement made by the appellant, was false and now he is stating truth. He has mentioned about his participation in the various occurrences, so caused, which also includes the occurrence of the present case. However, it is pertinent to mention that the said disclosure statement has also been attested by the police officials only namely ASI Suresh Kumar as well as SI Randhir Singh. Said ASI Suresh Kumar has stepped into witness box as PW-24 and also SI Randhir Singh, who is witness to the disclosure statement and recovery memo, has stepped into witness box as PW-19. However, these witnesses to the aforesaid disclosure statement and the recovery, on the basis thereof, have categorically stated about no public witness to have been joined during the course of interrogation and making of the disclosure statement. Furthermore, even it is pertinent to mention that at the time of demarcation of the various spots, where the appellant had executed his plan alongwith fellow accused, no independent witness, as such, has been associated, despite availability of the witness, as stated by the prosecution witnesses, faint attempt had been made by the witnesses of the prosecution to state that effort was made to associate independent witness but none was ready to associate the police party. PW-23 SI Narender Kumar, who has proved the

disclosure statement Ex.P69, so made by the appellant in case FIR No.384 dated 11.03.2012, has also stated that no public witness was joined at the time of recording of disclosure statement. He, further stated that he tried to join independent witness but everyone showed their helplessness. He also further expressed his ignorance to tell the names of those persons, who were asked by him to become witnesses. He also did not take any legal action against them. Furthermore, he has also stated that he cannot tell the names of victims pertaining to those occurrences, as disclosed by accused in his disclosure statement because accused did not tell the names of the victims. He also stated that he cannot tell the details regarding FIR of those occurrences, as disclosed by the accused and no recovery was effected, subsequent to disclosure statements. In the light of the same, when no independent witness has been joined and the witnesses, as such, have also not been able to depose with exactitude about the manner of disclosure, so made and also relating to the recovery, so having effected, does raise doubt about this manner of making of disclosure statement and recovery on the basis thereof, more particularly, when the alleged recovery has been effected from the residence at the instance of appellant Kewal. In the light of the same, the version of the prosecution, to connect the appellant, on the basis of disclosure statement and the recovery so effected, cannot be termed free from doubt.

Besides the aforesaid, the prosecution has also relied upon the footage of the withdrawal of the amount from the ATM card of the deceased. Much emphasis has been laid upon the CCTV footage having been recorded in the form of CD and the photographs of the same, having been prepared. To so establish about the preparation of the CD, the

prosecution has examined PW-2 Sushil Kumar, Crime Photographer, who has proved the photographs Ex.P3 to Ex.P8 as well as PW-3 Daya Chand, Bank Manager, Syndicate Bank, GT Road, Panipat, who in his examination-in-chief, has deposed about having handed over the bank account statement of Chander Parkash relating to 82052010008418 Ex.P9, which was taken into possession vide memo Ex.P10 and also furthermore, he has deposed about the withdrawal of amount two times from the ATM of Bank of India and Axis Bank, GT Road, Panipat. This witness has stated about the aforesaid amount to have been withdrawn during the intervening night of 28/29.02.2012. However, in cross-examination, the said witness stated that he came to know regarding withdrawal of the amount after 2-3 days, when the police had approached him. Even, PW-4 Daya Ram, Senior Manager, Bank of India has been examined to prove about the CCTV footage and the photographs, on the basis thereof, having prepared. However, while facing cross-examination, he had stated that he had seen CD Ex.P13, which has been displayed before him and he cannot identify the face of the person, who has been shown in CD Ex.P13, taking out cash from ATM pertaining to Bank of India. The deposition so made by the said witness, demolishes the prosecution version, when he stated that CD displayed today (on the day of his examination) does not belong to the ATM of their bank and regarding the date of withdrawal of money, involved in the present case. This gives a fatal knock to the prosecution version. In the light of the same, no sustenance can be drawn from the photographs, as big question mark is raised about the genuineness of the said CD. Similarly, PW-5 Rajat Singla, Manager, Axis Bank, has been examined, who has proved the CD of the ATM footage. In the cross-examination, he had stated that from the

appearance of CD, he cannot say, what is contained in the CD, as nothing is written on the CD. He handed over the CD to the police. He also stated that particulars of the present case has not been scribed on CD. The said witness also further in cross-examination, has stated that he cannot identify the face of the person, who is withdrawing the cash from ATM and who is seen in the CD, which has been displayed before him, in the Court. Definitely, in the light of the doubt, so having arisen, in view of the cross-examination of PW-4 Daya Ram, sole reliance cannot be placed upon the CD and photographs.

Even though, ATM card is stated to have been operated by Sonu for the withdrawal of the amount from the ATM, but however, the withdrawal, so asserted by the prosecution, in pursuance of disclosure so made, does not inspire confidence, as it has already been observed that no independent witness has been associated by the investigating agency. Moreover, in the cross-examination, PW-4 Daya Ram, who is Senior Manager, Bank of India, has stated that the CD is not relating to ATM of their bank. In view of the same, no sustenance, as such, can be drawn from the CCTV footage and photographs, so coming forth, to establish the connectivity of appellant Kewal with fellow accused Sonu.

As such, the element of doubt is definitely raised vis-a-vis the version of the prosecution and precisely, on this account, benefit of doubt, ought to be extended to the appellant.

As such, we find merit in the present appeal. The impugned judgment of conviction dated 12.09.2014 and order of sentence dated 16.09.2014 passed by learned Additional Sessions Judge, Panipat, is set aside and appellant Kewal is acquitted of the charges framed against him.

He 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