

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

(i) Crl. Appeal No.D-893-DB of 2014

Sonu

...Appellant

VERSUS

State of Haryana

...Respondent

(ii) Crl. Appeal No.D-886-DB of 2015

Kewal

...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-893-DB of 2014).

 Mr.Rishav Jain, Advocate
 for the appellant (in CRA No.D-886-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 dated 24.01.2014 and order of sentence dated 25.01.2014 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>
364-A read with 34 IPC	RI for ten years	₹5,000/-	RI one year
302 read with 34 IPC	Imprisonment for life	₹5,000/-	RI one year
201 read with 34 IPC	RI for seven years	₹2,000/-	RI six months

All the substantive sentences were ordered to run concurrently.

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

That, on 11.03.2012, SI Raj Kumar was on patrol duty at Red Light Chowk on G.T.Road, Panipat. Sanjay s/o Maman Ram, lodged a written complaint with SI Raj Kumar. Therein, it was stated by the complainant that his elder brother Ved Parkash aged about 45 years, used to work as Production Manager in Micro Turner Plant at Nalagarh (Himachal Pradesh). He had constructed his residential house in Shiv Colony Rohtak. He had two mobile phones bearing no.09805802242 and 9729701035. On 07.03.2012 at about 4.00 p.m., his brother Ved Parkash had left Nalagarh for proceeding to Rohtak and at about 8.00 p.m., his niece Aarti had a talk with her father Ved Parkash on mobile phone. Ved Parkash, at that time, had apprised her that he had reached Kurukshetra by bus. However, they waited for Ved Parkash whole night but he did not reach Rohtak. At about 2.58 a.m., Aarti again made a phone call to her father but the call did not materialize. On enquiry, they came to know the tower location of mobile phone no.09805802242 was in the area of Village Diwana (Panipat). Further, they also came to know that on that night on 08.03.2012 at about 3.19 a.m., ₹10,000/- was withdrawn, then at 3.20 a.m., again ₹10,000/- was withdrawn and then at 3.22 a.m., ₹300/- was withdrawn from ATM of Kotak Mahindra Bank, situated opposite Naval Cinema, through ATM card

of Ved Parkash. The account number of Ved Parkash is 049901523949 in ICICI Bank. In the complaint, complainant Sanjay Kumar had further asserted that he tried to search for his brother but he could not succeed. Now, he has doubt that some unknown persons had kidnapped his brother, with an intention to extort money. On this application, FIR under Section 364-A IPC was registered. During the course of investigation, the spot, from where the amount was withdrawn through ATM, was got inspected. Even, record of withdrawal of the amount was also obtained from ICICI Bank. The CCTV Footage of ATM of Kotak Mahindra Bank was also obtained. On 12.03.2012, an information was received that two persons namely Sonu s/o Suresh Kumar r/o Village Naultha and Kewal s/o Suresh Kumar r/o House No.574 Sector-6, HUDA were arrested in case bearing FIR No.384 dated 11.3.2012 registered under Sections 307, 332, 353 and 186 IPC, Police Station City Panipat, wherein they made disclosure statements, thereby admitting about having kidnapped and killed Ved Parkash. Both Sonu and Kewal were associated in the investigation of this case. Also, a message was also received on V.T. about dead body of an unknown man aged 40-45 years having recovered from Haibatpur Canal, which was placed in the mortuary of Baba Ambedkar Hospital, Delhi. Upon this information, SI Raj Kumar went to Baba Ambedkar Hospital, Delhi. The dead body of the unknown person lying in the mortuary of Baba Ambedkar Hospital, Delhi, was identified to be that of Ved Parkash s/o Maman Ram, resident of Shiv Colony, Rohtak. The postmortem examination on the dead body of Ved Parkash, was got conducted at Baba Ambedkar Hospital, Delhi. As per the postmortem report, the doctor opined the cause of death to be cerebral

ante-mortem, fresh in duration, caused by blunt object. Thereupon, addition of offences under Sections 302, 201, 120-B, 34 IPC was made. During the course of investigation, accused Sonu and Kewal made disclosure statements in case bearing FIR No.223 registered under sections 364, 302, 201 IPC, Police Station Model Town, Panipat. They made disclosure statements about having kidnapped Ved Parkash. They had also admitted that they snatched ATM card, mobile phone, driving license from Ved Parkash. Thereafter, they withdrew amounts from the ATM of Kotak Mahindra Bank with the help of ATM Card snatched from Ved Parkash. They also demarcated the spot, from where Ved Parkash was kidnapped and the spot from where the amount was withdrawn through ATM as well as the spot, where Ved Parkash was beaten, killed and thrown by them into the canal. Even, accused Sonu got recovered a purse containing some papers and currency notes worth ₹400/- from his house in pursuance to the disclosure statement made by him. Even, a chadar, parna, cap and driving license of Ved Parkash (deceased) and ₹1,500/- in cash were recovered from accused Kewal from his house, in pursuance of his disclosure statement. The 'wheel panna' used by the accused in the commission of the offence, was also recovered in case bearing FIR No.229 of 2012 registered under Sections 365, 302, 201, 120-B, 34 IPC, Police Station Chandni Bagh Panipat. The call details of mobile phone no.09805802242 and tower location, from where the calls were made, were also obtained and taken into possession by the Investigating Officer. Both the accused Sonu and Kewal were arrested in this case. However, fellow accused Bijender s/o Maan Singh, could not be arrested and separate proceedings were initiated against

him. The clothes, viscera and 'wheel panna' were sent to FSL, Madhuban for

examination and analysis. On receipt of the FSL report and 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-A, 302 and 201 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 20 witness, besides adducing documentary evidence. The witnesses so examined by the prosecution are namely **PW-1 Sanjay, complainant, PW-2 Parveen Kumar, PW-3 SI Raj Kumar, PW-4 SI Randhir Singh, PW-5 Sushil, PW-6 Inspector Dharambir Singh, PW-7 EASI Jasmer Singh, PW-8 ASI Dharam Pal, PW-9 SI Narinder, PW-10 Ved Parkash, Halqa Patwari, PW-11 Head Constable Mahabir, PW-12 Head Constable Murari Lal, PW-13 SI Ishwar Singh, PW-14 Aarti, PW-15 Sumit Aggarwal, PW-16 Dr.Vijay Dhankar, PW-17 Inspector Deepak Kumar, PW-18 Deepak Sharma, PW-19 ASI Naveen Kumar and PW-20 Inspector 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 of conviction and order of sentence, 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, 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 the commission of offence by both the appellants as claimed by the prosecution. However, prosecution banks upon the circumstantial evidence, which also do not stand sufficiently linked to both the appellants. 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 appellants, have very painstakingly drawn our attention to the various aspects of the case, which according to them, demolish the very substratum of prosecution case. It has been pointed that though, death of Ved 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 appellants with the occurrence in question. In fact, they submitted that appellants, 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 11.3.2012. 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, has been associated in the investigating. Not only this, also it has been submitted that even no independent witness has been thereafter associated, while conducting

associated, at the time, when allegedly the accused made disclosure statements and recovery having effected thereupon, but however, considering the cross-examination of the said witness, the version of the prosecution, stands belied. In the light of the same, a prayer has been made for acceptance of both the appeals and to record acquittal of the appellants.

On the contrary, learned State counsel has refuted the claim of the appellants, tooth and nail. He has assiduously submitted that even though, there is no direct evidence vis-a-vis murder of Ved Parkash, coming on record, but however, the circumstantial evidence, brought on record, so establish the complicity of both the appellants in causing the death of Ved Parkash and thereafter, throwing away the dead body, so as to cause disappearance of the evidence qua commission of crime. It is submitted that the chain of circumstantial evidence, stands amply linked to both the accused, which unerringly point the needle of guilt towards them. It is further submitted that prosecution has proved the case to the hilt and guilt of the accused, deducible from the circumstances coming forth, as from the testimonies of various witnesses examined by the prosecution. It is submitted that the commission of the offence, by both the appellants, as such, has been disclosed by them during the course of interrogation of both the accused, in a separate FIR. Moreover, the weapon of offence, has also been recovered, at their instance. Even, they have got demarcated the place, where the victim Ved Parkash was kidnapped as well as the place, where he was subjected to beatings and done to death. Furthermore, withdrawal of money, while using ATM card of the deceased, also stands established. In the light of the same, it is submitted that chain of circumstantial evidence, is

death of Ved Parkash. As such, it is submitted that learned trial Court has appraised the evidence in correct perspective and recorded conviction of both the appellants. Thus, summing up his arguments, learned State counsel has made a prayer for dismissal of both the appeals.

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

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.

As per the version of the prosecution, Ved Parkash had left Nalagarh for Rohtak at about 4.00 p.m. on 07.03.2012. His daughter Aarti had a conversation with Ved Parkash on his mobile and Ved Parkash had apprised his daughter that he had reached Kurukshetra and would make a phone call, after reaching Rohtak. However, Ved Parkash did not reach Rohtak and thereupon, his daughter Aarti again tried to contact her father on his mobile phone at about 2.54 a.m. These facts stand amply established from the testimony of Aarti, daughter of the deceased, who has stepped into witness box as PW-14 as well as the detail of call record, which are Ex.P49 to Ex.P51. The tower location of the mobile phone with regard to the call made at 2.54 a.m., on 08.03.2012, was found to be in the area of village Diwana. This is so evident, from the report Ex.P2. The mobile call details have been proved by PW-3 SI Raj Kumar, Thereafter, the whereabouts of Ved Parkash, were not known to the complainant side. However, it was on 12.03.2012, the dead body of Ved Parkash was found floating in Habatpur canal and was recovered by the police of Shabad Dairy Outer Delhi. The dead body was kept in Dr. Baba Sahab Ambedkar Hospital, Rohini. In pursuance of receipt of such information, PW-1 Sanjay, who is complainant as well as PW-5 Sushil, who is also cousin of the deceased, had gone to the mortuary and identified the dead body to be that of Ved Parkash. Subsequently, inquest proceedings were conducted by SI Ishwar Singh and postmortem examination was also got conducted upon the dead body.

Dr.Vijay Dhankar has been examined as PW-16, who deposed about conducting of the postmortem examination on the dead body of Ved Parkash by himself along with Dr.J.V.Kiran Kumar and proved the postmortem report Ex.P16/A. Therein, he also stated the cause of death to be cerebral damage consequent to blunt force trauma to the head. All the injuries were ante-mortem, fresh in duration caused by blunt object. Thus, fact of death of Ved Parkash, as such, stands amply established and also it stands amply established that after having caused his death, his dead body was thrown in the canal.

In the light of the same, it is pertinent to mention that both the accused Kewal and Sonu were arrested in case FIR No.384 dated 11.03.2012 of Police Station Panipat, wherein, they had made disclosure statement, stating that on the night of 07/08.03.2012 they had given lift to a person going to Rohtak in their car No.HR-10G-7171 and they robbed him by snatching his purse and ATM card. They also stated about having subjected him (victim) and gave injuries on his head with the help of a 'wheel panna' and threw his dead body into the canal. They had also stated about withdrawn of the amount from the ATM of Kotak Mahindra Bank, Panipat with the help of ATM card snatched from the victim. Also, it is the version of the prosecution that both the aforesaid accused had also made disclosure statements, in case bearing FIR No.229 dated 29.02.2012, under Sections 365, 302, 201, 120-B, 34 IPC registered at Police Station Chandni Bagh, Panipat and on the basis thereof, got recovered 'wheel panna', which is weapon of offence of the present case. Even, recovery memo and site plan of spot of recovery of 'wheel panna' as such, has been proved by PW-4

Further, it is the claim of the prosecution that Sonu and Kewal had made disclosure statements PW19/A and PW19/B during the course of investigation, on the basis whereof, Kewal got recovered a bag containing woolen chadar, cap, parna and driving license of victim, which were taken into possession by the Investigating Officer vide recovery memo Ex.P10. Likewise, Sonu, on the basis of his disclosure statement, got recovered, the registration certificate of motor cycle, Haryana Residence Certificate and currency notes worth ₹400/-, which were taken into possession by the Investigating Officer vide recovery memo Ex.P11 and the same stands proved by way of examination of PW-1 Sanjay, PW-3 SI Raj Kumar and PW-20 Inspector Suresh Kumar.

Such, being the version of the prosecution, it is pertinent to mention that both the appellants have made disclosure statements PW19/A and PW19/B. Therein, both the appellants have stated about the plan having made by them, at the instance of Vijender Singh s/o Maan Singh and thereupon, they had intercepted the victim and therein, also stated about the manner, in which, they had tied both of his hands with a piece of cloth, snatched from his pocket purse, his driving licence, ₹750, ATM card and mobile phone. Also, they had snatched one polybag containing clothes and after that, they asked him to tell Pin of his ATM card and furthermore, they stated about having injuries through iron wheel spinner. However, it is pertinent to mention that during the course of interrogation of both the said accused, no independent witness, as such, had been associated. Both the disclosure statements are attested by ASI Naveen Kumar and Pushpinder Singh. Said Naveen Kumar, who has been examined as PW-19, has

was joined at the time of recording of the disclosure statements, as the persons, who were asked to become witnesses, showed their inability. Also, he stated that he cannot tell their names and Investigating Officer did not take any action against them. Even, Inspector Suresh Kumar has stepped into witness box as PW-20 and he had though stated in consonance with the prosecution version, about making of the disclosure statements but however, while facing cross-examination, he has also stated that no public witness was joined to the investigation at the time of recording of the disclosure statements of the accused as they showed their inability. He also stated that he cannot tell the names of the person, who were so asked to become witness. He did not take any legal action against them. As such, it is evident that no witness from the public was associated.

In the light of the same, it is pertinent to mention that there is nothing, as such, coming on record, about appellants to have named the victim or subsequently, any effort made by the Investigating Officer, to seek identification of the victim.

Furthermore, as already detailed aforesaid, it is the version of the prosecution, about the disclosure statements, thereafter, made by the appellants, which have already been detailed aforesaid and qua the same also, it should be noted that no independent witness, as such, has been associated, during the course of interrogation of the appellants, wherein, they had made disclosure statements and recovery having effected thereupon. In this regard, it is pertinent to mention that even though PW-1 Sanjay, complainant is claimed to have associated and he had signed the memos, such like of demarcation and also about disclosure statements,

said witness, he has not been able to disclose about the manner of conducting the proceedings by the investigating agency. Qua visit to the house of Kewal, he stated that he cannot tell, where the clothes were kept because he was standing on the ground floor, whereas, he himself states that house of Kewal is located at the second floor. Also, he stated that there was no identification mark on the parna. Even, there is no specific identification mark on topa as well as chadar. He also further stated likewise that the house of Sonu is situated in the middle of village. Though, he met father of Sonu there but there is no version coming forth, from the mouth of Investigating Officer, about having met father of Sonu and in what context, they had met. This witness further specifically stated that the police did not call any respectable person, including Numberdar from the village. He does not know who got recovered the articles from the house of Sonu. He also further stated that SI Raj Kumar showed him the articles. He himself did not enter the house of Sonu. He also stated that on that day, Sonu was taken to the canal side but he further stated that he was not taken by the police beyond village Naultha.

Likewise, PW-3 SI Raj Kumar, though, has deposed about demarcation of the places by the appellants and also about the disclosure statements and recoveries having effected, on the basis thereof, but, while facing cross-examination, the said witness has also stated that during all the demarcations, no public witness was joined by the Investigating Officer in spite availability. The said witness further though stated about the recovery having effected from the house of Kewal bearing H.No.574-G, Housing Board Colony, Panipat, but he stated that the house was open and he cannot

witness also stated that he cannot tell whether any public witness from the locality was joined or not. He also stated that he cannot tell the cause of non-joining of the public witnesses, at the time of effecting recovery. The said witness has also been unable to tell the number of persons, residing in the house in question. He also stated that he neither can tell or remember, whether parents, brothers and sisters of Kewal, were present in the house, at that time or not. Likewise, vis-a-vis house of Sonu, he had also stated that it is situated in the middle of the village and it is surrounded by a number of houses but he cannot tell the name of neighbour. He also stated that he does not remember, as to whom he met, at the house of Sonu. The main gate of the house of Sonu was open, at that time. No Sarpanch, member panchayat or other persons were called from the locality. No person from the locality had visited the house of Sonu. No independent witness was joined.

Thus, from the aforesaid, it is evident that the witnesses, who had allegedly witnessed the disclosure statements and the recoveries, as such, are unable to state about the basic facts, which could have been noticed, at the time of recovery of articles in question. In fact, despite the spot of recoveries being located in thicket, no effort, as such, has been made by the investigating agency to associate independent witness. Even, the recovery of the articles, in the light of the cross-examination of the aforesaid witnesses, cannot be said to be free from doubt.

Besides the aforesaid, it is claim of the prosecution that wheel panna was the weapon of offence, used for the purpose of killing Ved Parkash. In this regard, PW-4 SI Randhir Singh has been examined, who has stated about recovery of wheel panna, caused by the accused in the

Sections 365, 302, 201, 120-B and 34 IPC and rough sketch of wheel panna is Ex.P34/A. However, it is pertinent to mention that said wheel panna had not been produced at any stage. Even, no opinion qua the use of said weapon, from the concerned doctor, who conducted the postmortem examination, has been obtained, to establish the linkage in causing death of Ved Parkash by use of this weapon. Moreover, the recovery of said weapon, is stated to have been effected, at the instance of accused Kewal but PW-4 SI Randhir Singh, while facing cross-examination, has also stated that the mother of Kewal and his brother, were present in the house and house of Kewal was on first floor. He also stated that there were many persons assembled but no independent person was joined. This also, to some extent, belies the prosecution version.

Further, it is the claim of the prosecution that after kidnapping of Ved Parkash by both the appellants on 07.03.2012, on the intervening night of 07/08.03.2012, had snatched ATM card from the victim and further had operated the same and had withdrawn sum of ₹20,300/- in three transactions. To so establish the transactions, PW-15 Sumit Aggrawal, who is Assistant Manager of ICICI Bank, has been examined by the prosecution who has proved the record of the account bearing No.049901523949, pertaining to Ved Parkash and had proved the transaction slip, which is Ex.P56. Also, the prosecution has examined PW-18 Deepak Sharma, Branch Manager, Kotak Mahindra Bank, Gohana, who has also given one Pen Drive and print out from CCTV footage, Ex.P41 to Ex.P44 and about the transactions carried out on 08.03.2012, at around 3.19 a.m., 3.20 a.m. and 3.21 a.m., as three transactions were made. But, however, it is pertinent

there was no light at the time of withdrawal of the amount from the ATM and there was no proper visual captured also. He also admitted to be correct that he could not identify, who had withdrawn the said amount. In the light of the same, though, the fact of withdrawal of the amount, as such, stands amply established from the record, but however, the accused do not stand connected to said withdrawals. Even, ATM card, has not been recovered, from any of the accused. It is highly improbable that the accused, as such, would not retain ATM card (if so snatched by them) but would retain clothing etc. of the deceased, as claimed by the prosecution. The use of the ATM card by the appellants, as such, do not stand established and it is a major yawning gap in the chain of circumstantial evidence.

In the light of the aforesaid discussion, when the version so put forth by the prosecution, about the revelations made by the appellants, about the spot and manner of commission of the crime and the manner, in which, their plan was executed and also about recovery, so effected, as already detailed aforesaid, do not inspire confidence and even, the fact of linkage through usage of ATM, not being established, the prosecution case, as such, cannot be claimed to be above board. 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 appellants.

As such, we find merit in both the appeals filed by the appellants and the same are allowed. The impugned judgment of conviction dated 24.01.2014 and order of sentence dated 25.01.2014 passed by learned Additional Sessions Judge, Panipat, are set aside and accused/appellants Kewal 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