

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

**(1) CRM-A-1951 of 2019 (O&M)
Date of Decision: 21.01.2020**

State of Haryana

.....Applicant-Appellant

VS.

Mahender and another

.....Respondents

(2) CRM-A-2241 of 2019 (O&M)

Manish Kumar

.....Applicant-Appellant

VS.

State of Haryana and others

.....Respondents

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

Present : Mr. Vikrant Pamboo, DAG Haryana
for the applicant-appellant-State
in CRM-A-1951-2019.

Mr. Anil Kumar Rana, Advocate for
Mr. Ravinder Rana, Advocate,
for the applicant-appellant in CRM-A-2241-2019.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two applications seeking leave to appeal against the common judgment dated 11.02.2019 passed by Additional Sessions Judge, Jhajjar vide which accused/respondents, namely, Mahender and Surender were acquitted of the charges in FIR No.64 dated 15.03.2015 registered under Sections 346, 302, 201 and 202 IPC at Police Station Beri, District Jhajjar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 1 are reproduced as under:-

“1. The prosecution case in nutshell is that the complainant Manish on 15.03.2015, vide his application Ex.PW5/A informed the police that he is resident of village Sujana. Sh. Rajpal his father is working in irrigation department and has been assigned duty at Rampura Head. On 15.03.2015, in the morning his father had a talk with JE with regard to water in the distributory. Rajpal his father has not return home even though the duty hours have come to an end. He suspicious that some unknown person has abducted his father. On the basis of afore-said information FIR bearing no. 64 dated 15.03.2015 under Section 346 of IPC was registered. During investigation complainant Manish in his statement under Section 161 Cr.P.C. told the police that after enquiry he has come to know that about one and half year ago there was a quarrel between their family and family members of Surender son of Bharat Singh resident of Dujana. In the afore-said quarrel many injuries were suffered by Bharat Singh (father of Surender). But the afore-said matter was compromised in the village panchayat. The family members of Surender were of a view that the quarrel took place mainly because of Rajpal. He is sure that Surender has abducted his father Rajpal. If the matter is enquired from Surender, then they can get clue with regard to the missing of his father. On 17.03.2015, accused Surender was arrested. During investigation he suffered disclosure statement that they have purchased a house from Lakshmi Devi, who is wife of Rajpal's brother Jogi Ram. Rajpal was unhappy with this and on account of which they had a quarrel in the month of July,2014. In the afore-said quarrel Rajpal inflicted multiple injuries to his father Bharat Singh. A report in this regard was made by them in Police Post Dujana but the matter was got compromised by the panchayat. On 15.03.2015, at about 6-7:00 a.m. he had gone to water distributory for a walk. He saw Rajpal going towards Rampura Head. He was carrying an iron rod, which was hidden by him in his shirt.

Rajpal objected his coming to the canal. Thereafter a scuffle took place between him and Rajpal. He gave 4-5 iron rod blows on the head of the Rajpal. On account of which Rajpal died on the spot. Thereafter he threw Rajpal dead body in the canal. On the demarcation of Surrender dead body of Rajpal was recovered from Dujana Canal. On 18.03.2015, the iron rod used in the occurrence was also recovered on the demarcation of Surrender from the wheat field. The Identity Card of Rajpal issued by Irrigation Department was got recovered by Surrender from his house. Surrender informed his brother Mahender on Mahender's mobile phone no. 9466708976 about the incident from the mobile phone of Rajpal bearing no. 9466202562. On 19.03.2015, accused Mahender was arrested. "

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court.

Charges under Sections 302, 201 and 202 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Sehdev, Halqa Patwari, PW-2 Constable Sonu, PW-3 ESI Surrender Kumar, PW-4 HC Mandeep Kumar, PW-5 Manish Kumar, PW-6 Rajbir Saini, PW-7 EHC Karan Singh, PW-8 ASI Pawan Kumar, PW-9 Constable Naseeb Singh, PW-10 Raj Kumar, PW-11 Ashok Kumar, PW-12 SI Telu Ram, PW-13 Dr. Kunal Kadian, PW-14 ASI Mukesh Kumar, PW-15 Inspector Kulbir Singh, PW-16 Dalbir Singh Kundu, PW-17 Rajesh Kumar, PW-18 Neetu Senior Scientific Officer and closed the evidence.

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

Manish Sharma was examined as DW-1 and Partibha, SDO Water Services was examined as DW-2 in the defence evidence.

After appraisal of evidence, the learned trial court vide impugned judgment dated 11.02.2019 acquitted accused/respondents of the charges framed against them.

Feeling dissatisfied with the impugned judgment, CRM-A-1951-2019 has been filed by the State of Haryana whereas, CRM-A-2241-2019 has been filed by the complainant.

It is contended by the learned State counsel that the learned trial Court has failed to consider and appreciate the testimony of PW-11, Ashok Kumar who had deposed that on 17.03.2015, he along with his uncle Raj Kumar went to Police Station Beri, where accused Surender had confessed before him and the Police that there was an ill-will in his mind for Rajpal due to an earlier altercation between his family and the family of the deceased over a plot. A day prior to the occurrence, while he had gone towards Rampura minor for morning walk, the deceased, Rajpal had met him and Rajpal had slapped him (Surender). On 15.03.2015 an altercation had taken place between him and Rajpal and in the said altercation, he gave four iron rod blows on the head of Rajpal and thereafter, he threw the dead body of Rajpal in

Rampura minor head. He also confessed that after the murder of Rajpal, he called his brother Mahender from the mobile phone of Rajpal and disclosed him about the occurrence.

It is further contended that as per medical opinion the injuries on the body of the deceased were possible with the weapon of offence i.e. iron rod which was recovered as per the disclosure of accused Surender. In pursuance of the disclosure statement made by accused Surender, dead body and identity card of deceased Rajpal and weapon of offence i.e. iron rod were got recovered. Learned trial Court has failed to appreciate all the evidence available on the record. Thus, the judgment of acquittal suffers from illegality and needs to be set aside.

Learned counsel appearing on behalf of the complainant has adopted the line of arguments as put forth by the learned State counsel.

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

The learned trial Court has acquitted the accused on the following grounds:-

- 1. The motive behind the killing of Rajpal was not proved.*
- 2. After the compromise, Ex.DB, there was no quarrel between the parties which fact has been admitted by the prosecution witnesses, namely PW-5 Manish and PW-11 Ashok.*
- 3. There is no evidence on record with regard to slapping of deceased by the accused.*

4. DW-1 Manish Lambardar had proved that accused Surender was not present at the time of recovery of dead body which further stood substantiated from photographs Ex.PW-1/A to PW-3/M supported by the statement of PW-3 ESI Surender Kumar.

5. The place of recovery of iron rod was open and accessible to all, therefore, the recovery of iron rod is vitiated.

6. There was no evidence on record with regard to alleged calls made by accused Surender to accused Mahender from the mobile phone of deceased Rajpal.

We have gone through the case file carefully and find that the judgment of acquittal has been passed rightly. The prosecution has not been able to complete the chain of circumstantial evidence so as to come to the conclusion that the accused alone are the perpetrators of the crime. Though, the prosecution has relied upon the circumstance of recovery of dead body at the instance of accused Surender but the same stands belied by the testimony of DW-1, Manish Lambardar who had stated that accused Surender was not present at the time of recovery of dead body which stands corroborated by the testimony of PW-3 ESI Surender Kumar coupled with the photographs Ex.PW-3/A to Ex.PW-3/M wherein DW-1 Manish Kumar is seen but accused Surender is not noticed. Further, the motive behind the occurrence is not proved. PW-5, Manish and PW-11, Ashok had stated that after the compromise Ex.DB, no quarrel had taken place between the accused and the deceased. The place of recovery of iron rod being open place was accessible to all, the recovery of rod is of no help to the prosecution

and in the absence of recovery of a fact, the confessional statement pales into insignificance. Not only that, there is no evidence on record with regard to location of towers of the alleged calls made by accused Surender to accused Mahender from the mobile phone of the deceased. There is no reason to differ from the view taken by the learned trial Court. The judgment of acquittal does not suffer from any perversity or illegality calling for interference by this Court, therefore, the present applications for leave to appeal are declined. Even otherwise, there is delay of 75 days in State case and that of 95 days in complainant's case in filing the appeal. There is no cogent explanation for condoning the delay.

Thus, the applications for condonation of delay as well as applications seeking leave to appeal are hereby dismissed.

Photocopy of this order be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

21.01.2020.
SN

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