

**In the High Court of Punjab and Haryana, at Chandigarh**

**1. Criminal Appeal No. S-2724 of 2019**

Randhir and Another

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

**AND**

**2. Criminal Appeal No. S-2734 of 2019**

Sanjay

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

**Date of Decision: 13 .01.2020**

**CORAM: Hon'ble Mr. Justice Anil Kshetarpal**

Present: Mr. Aman Pal and Mr. Partap Singh Gill, Advocates  
for the appellants.

Mr. Manish Bansal, Deputy Advocate General,  
Haryana for the respondent.

**Anil Kshetarpal, J.**

By this judgement, Criminal Appeal No. S-2724 & 2734 of 2019 assailing correctness of a common judgement passed by the Sessions Court, while deciding Sessions Case No. 32 of 2017, shall stand disposed of.

The appellants have been ordered to be convicted for having committed the offence under Section 304 Part-II, Section 201 read with Section 34 of the Indian Penal Code (for short "IPC"). They have been

sentenced to undergo three years of rigorous imprisonment and to pay fine of Rs.10,000/- each for commission of offence under Section 201 read with Section 34 IPC. In default of payment of fine, to further undergo simple imprisonment for a period of two months. The appellants have further been sentenced to undergo rigorous imprisonment for a period of ten years (10 years) and to pay fine of Rs.2,00,000/- each for commission of offence punishable under Section 304 Part-II read with Section 34 IPC. In default of payment of fine, to further undergo simple imprisonment for a period of two years each. Both the sentences shall run concurrently.

In a nutshell, the case of the prosecution is that on 24.11.2016, a telephonic message was received regarding recovery of a dead body of Deepak alias Kala son of Balraj resident of village Bitani, near Dabra Pond, who had various injuries on his body. Sub Inspector Suresh Kumar along with EHC Anil Kumar reached at the spot in a government vehicle. Smt.Rajo Devi wife of Balraj along with many others were present near the corpse of Deepak. She (mother of the deceased) got recorded her statement to the effect that she is a housewife, whereas her husband Balraj runs a commercial vehicle (canter) and has gone out of the village. She had three sons Anil aged 16 years, Deepak alias Kala aged 15 years and Mohit aged 13 years. Late Deepak alias Kala (her son) was studying in 9<sup>th</sup> class. On 23.11.2016, Deepak, after returning home from the school at about 11.00 a.m., went to get her PAN card prepared. Subsequently, Deepak left home at about 1.00 p.m. but did not return. They tried to search him but failed to trace. On 24.11.2016, in the early morning hours, she got an information that a dead body of a boy is lying in the Dabra Pond located near the village. She

along with her brother-in-law Rajbir rushed to the spot where she saw dead body of her son Deepak alias Kala lying near the heap of dung cakes belonging to Oma son of Surjan. There were marks of injuries on his corpse. On 24.11.2016, Deepak had an altercation with Gulab son of Fateh Singh and she apprehends that Gulab Singh might have killed Deepak.

On the basis of aforesaid statement of Smt. Rajo Devi Ex.P13, a case under Sections 302 and 201 IPC was registered. Sub Inspector Suresh Kumar started the investigation with inspection of the spot. He prepared a site plan and recorded the statements of the relevant witnesses. The place of occurrence was also photographed, blood stained soil was lifted from the spot, converted into parcel and taken into possession. He also conducted inquest proceedings under Section 174 Cr.P.C. The post mortem examination of the corpse was got conducted from Civil Hospital, Jind. The investigation was supervised by Kaptan Singh, Deputy Superintendent of Police, Jind.

On 24.11.2016, during the investigation, Rajbir son of Jeet Singh, resident of village Bitani got his statement recorded to the effect that on 23.11.2016, at about 1.00 p.m., he had last seen his nephew Deepak travelling on a Sonalika tractor bearing registration No. HR-33-C-4725, driven by Sanjay Kumar son of Inder Singh along with Randhir alias Billu. They were going towards the agriculture land of Randhir alias Billu. He expressed apprehension that Sanjay Kumar and Randhir alias Billu might have committed the murder of his nephew Deepak alias Kala by crushing him under the tractor and with an intention to destroy the corpse, dumped

supplementary statement recorded that she had earlier named Gulab Singh as suspected murderer of her son but he is innocent. She stated that now she has confirmed the information that on 23.11.2016, Sanjay Kumar and Randhir lured his son Deepak on their tractor Sonalika bearing registration No. HR-33-C-4725 and took him to the agriculture land belonging to Anant Ram son of Ram Chander, resident of Bitani, where Sanjay Kumar, Randhir alias Billu and Anant Kumar crushed her son with the help of the tractor and thus, committed murder. They with an intention to destroy the corpse, threw the same in the Dabra near the pond. Pursuant thereto, offence under Section 365 read with Section 34 IPC was added by the police. Sanjay Kumar, Anant and Randhir (appellants) were arrested. They suffered disclosure statements on 26.11.2016 regarding commission crime and got the Sonalika Tractor bearing registration No. HR-33-C-4725 with Rotavator, chappals, lower and half burnt remains of the corpse of the deceased and blood stained soil recovered which were taken into possession by the police. The appellants also led the police to the place of occurrence and various other places leading to recovery of the various parts of body of the deceased. On completion of the investigation, the report under Section 173 Cr.P.C. was filed in the Court. After complying with the requirements of the provisions of Section 207 Cr.P.C., the case was committed to the Court of Sessions which framed charges.

Prosecution, in order to prove its case, examined following witnesses:-

*“PW.1        Naveen*

*PW.2        Deepa*

*PW.3          Gopal Singh*  
*PW.4          Rajbir.*  
*PW.5          Mir Singh*  
*PW.6          Rajo*  
*PW.7          Head Constable Subhash Chander.*  
*PW.8          Constable Ashok Kumar*  
*PW.9          Ramesh Chand Patwari*  
*PW.10        Constable Rohtash”*

At this stage, it would be relevant to note that there are three important witnesses who had appeared on behalf of the prosecution. One is Smt. Rajo Devi, whereas second is Rajbir. He claims that he had last seen his nephew, namely Deepak with Sanjay, Randhir and Anant Ram travelling on a tractor with a Rotavator attached thereto driven by Sanjay. They were going towards the agriculture land of accused Randhir alias Billu. Remaining statement is with regard to recovery of the corpse. During cross-examination, he disclosed that he had seen Deepak deceased in the company of appellants Sanjay, Randhir and Anant Ram at 2.30 p.m. When confronted with the statement given to the police during investigation under Section 161 Cr.P.C. Ex.D1, he admitted that in his statement Ex.D1, he had mentioned that he had seen deceased Deepak along with two other appellants at 1.00 P.M. instead of 2.00 to 2.30 p.m. as stated in the deposition before the Court. He was further confronted with the fact that when he gave an application to police he did not name Anant Ram.

Second important witness is Smt. Rajo Devi PW.6. She has

deposed in line with the case of prosecution. She stated that her son has been

murdered by these three persons. Her first statement was recorded on 24.11.2016, leading to the registration of the FIR. In that statement, she suspected that Gulab Singh son of Fateh Singh had committed murder of her son. On the next day i.e. on 25.11.2016 vide Ex.D2, she stated that Gulab Singh is innocent and in fact Deepak was taken away by Sanjay and Randhir Singh with ill intentions. She further stated that Sanjay, Anant Ram and Randhir had killed her son. When she appeared in evidence as PW.6, she reiterated the prosecution case in examination-in-chief. She admitted that Deepak deceased had no prior enmity with Randhir or Anant Ram. She tried to suggest that there was some dispute with Sanjay 10/11 days prior to the incident and the deceased was threatened. However, when confronted, she admitted that this fact was not disclosed in the complaint to the police. Next important witness is Investigating Officer Balwan Singh who has described as to how the investigation progressed and samples were collected.

Now let us analyse the evidence. Rajbir Singh is uncle of the deceased, residing in the same village. He claims in Ex.D1 his first statement before the police, that he had last seen Deepak alias Kala, since deceased, in the company of appellants Sanjay, Randhir and Anant Ram on 23.11.2016 at 1.00 p.m. However, when he appeared in the Court he stated that he had seen them together travelling on a tractor at 2.00 to 2.30 p.m. Whereabouts of Deepak were not known to them. He was in the company of Smt. Rajo Devi to trace Deepak in the entire evening of 23.11.2016. If he had actually seen the appellants with deceased Deepak in the company of the appellants, he would have informed Smt. Rajo Devi, mother of deceased on the same day. Further, on the next day i.e. 24.11.2016, when corpse of the

deceased was recovered on the information being given and the police visited the spot, Rajbir did not disclose this fact either to Smt. Rajo Devi or to the police. Rajo Devi gave a statement to the police that she suspected that Gulab Singh is behind the murder of Deepak. Rajbir, for the first time, gives his statement that he saw the deceased with the appellants on 24.11.2016, however, still he did not chose to inform his sister-in-law (brother's wife).

In view of the aforesaid facts, the evidence of Rajbir with regard to last seen is not found reliable. Smt. Rajo Devi has stated that she has been searching for her son the entire evening. If she was searching and her own brother-in-law had seen the deceased in the company of the appellants, naturally he would have disclosed this fact to Smt. Rajo Devi. She, for the first time, made a statement on the basis of information of Rajbir to the police on 25.11.2016 i.e. two days after Deepak had gone missing and his dead body had also been recovered the previous day i.e. on 24.11.2016.

The prosecution relies upon the alleged confession statements of the appellants before the police. In these confessional statements, which are Ex.P27, Ex.P28 & Ex.P29, it has been stated by the appellants that they had picked up Deepak alias Kala, since deceased, in the hope that he would help them in sowing the wheat crop. At that time, there were two persons on the tractor namely Sanjay and Randhir. When they reached the agriculture land of Anant Ram, they came to know that he had already sown the wheat. He told everyone to get down from the tractor and sit on the side as he would like to work in the agriculture land with the tractor. Thereafter,

Anant Ram started working in the field with the help of tractor. Sanjay has stated that at about 2.30 p.m. he asked Deepak to fetch a water bottle from the tractor and when Deepak went near the tractor, he made an attempt to ride on the Rotavator attached to the tractor while the same was in motion. Deceased Deepak slipped from the Rotavator and got entangled therein. Thereupon, Sanjay and Randhir ran and stopped the tractor. They saw that Deepak alias Kala had died on being entangled in the Rotavator. Thereafter, they made an attempt to first conceal the corpse and thereafter, made an effort to destroy the same. On the disclosures/confessional statements, various parts of the body, blood stained earth were taken into possession. The burnt residues of wheat (known as “parali”) was also recovered.

As per Sections 25 & 26 of the Evidence Act, 1872 it is apparent that the confession of the accused to the police is not to be proved against the appellant. Section 27 makes a slight departure and is in the nature of exception to Sections 25 & 26 of the Act. It provides that the information which leads to recovery of evidence is admissible only to the extent of discovery of the evidence. Basically, it partially removes the bar on the admissibility of the confession statement under Sections 25 & 26 of the Act to the limited extent. However, the removal of bar is not to an extent so as to absolutely undo the object of Sections 25 & 26 of the Act. Section 27 has its foundation on the principle that even though the evidence relating to the confession or other statement made by a person, while he is in the custody of a police officer, is inadmissible, if the truth of the information given by the accused results in discovery of a fact, only that part of the evidence which leads to discovery is admissible. Section 27 is basically

based on the doctrine of confirmation by subsequent facts. Essential ingredients of Section 27 are- (i) the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information, (ii) only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused, (iii) the discovery of the fact must relate to the commission of some offence. If all the three ingredients are fulfilled, the embargo on the admissibility of the confession of the accused before the police will not apply to the limited extent.

In view of the aforesaid, only that portion of the alleged confession statements of the accused which led to recovery of the evidence is only admissible. Thus, the prosecution has failed to establish that the appellants had infact murdered Deepak alias Kala because that part of the confession is not admissible in view of Sections 25 & 26 of the Act.

Learned Sessions Judge has convicted the appellants under Section 304 PC, which is extracted as under:

***“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is***

*done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.*

On careful reading of Section 304 IPC, it becomes apparent that it is in two parts. First part deals with offence of culpable homicide not amounting to murder if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. Second part of Section 304 provides that if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Therefore, the fundamental difference between the two parts is that in the first part, if the act is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, whereas in the second part if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. In the present case, neither Part-I of Section 304 IPC is applicable nor ingredients of Part-II are made out. The deceased Deepak was 15 years old boy living in a village. He was mature enough to understand what is good or bad for him. Even if for the arguments sake it is assumed that the confession of the appellants is admissible, Deepak-deceased was told to pick a bottle of water from the tractor. He was never instructed to pick the water bottle from the tractor with attached Rotavator in motion. He could have requested Anant Ram, who was driving the tractor, to stop or to hand over the water bottle. As per the alleged confession statements, which although is not admissible in evidence, Deepak had tried to ride on the

Rotavator when it was being pulled by the tractor. He slipped from the Rotavator resulting in his death. In such situation, even if it is accepted that the confession statements are admissible in evidence, still it cannot be said that Deepak was asked to fetch water with the knowledge that it is likely to cause his death. It would not be appropriate to record such conclusion merely because a 15 years old boy was requested to fetch a bottle of water from the tractor.

In view of the above, the judgement under appeal is found to be not sustainable. Hence, set aside. The present appeal is allowed. The appellants be set free, if not required in any other case.

**(Anil Kshetarpal)**  
**Judge**

**January 13, 2020**  
**“DK”**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No