

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

Crl. Appeal No.879-DB of 2009 (O&M)

Date of Decision: November 03, 2021

Vikey @ Vikram Singh and others

...Appellants

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Rakesh Nehra, Senior Advocate with
Mr.Ritesh Kumar, Advocate
for the appellants.

Mr.Ankur Mittal, Addl. Advocate General, Haryana with
Mr.Saurabh Mago, Asstt. Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 02.05.2009 and order of sentence dated 04.05.2009 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon, vide which, appellants were held guilty and convicted for an offence under Section 302 read with Section 120-B and sentenced to undergo imprisonment for life. Even, fine of Rs.5,000/- was imposed upon each appellant, in default whereof, they were to further undergo rigorous imprisonment for a period of two years.

Background facts in nutshell are as follows:-

That, on 26.04.2006 ASI Prem Chand along with police

officials, was present at Bilaspur Chowk, where Raj Singh @ Papli, got recorded his statement, to the effect that 'on that very day, at about 1.30 p.m., he was proceeding to Tauru for some personal work, where he spotted a dead body on the road, near village Udaipuri and there was no injury mark on the body. However, there was blue coloured mark around the neck and deceased appeared to be aged about 18-19 years. People from Shekhpur, Kalwari and Pathredi were called to identify the dead body but to no effect.

On the basis of the said statement, an entry in the daily diary was recorded. Subsequently, FIR was registered. The accused in the present case were arrested in another case bearing FIR No.1133 dated 04.11.2006, under Sections 365, 302 and 201 IPC, Police Station DLF. The accused-appellants made confessional statement to the effect that they had committed murder of an unknown person by making him to sit in vehicle Mahindra Max bearing registration No.HR-61-1154 and strangled him with the help of a belt. On his search, Rs.150/- were recovered and they had purchased fuel for the vehicle from the said amount.

On presentation of challan, compliance of Section 207 Cr.P.C. was made. On the basis of material coming forth, charge under Sections 396, 302 and 201 read with Section 34 IPC was framed against accused-appellants, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 20 witnesses. **PW-1** ASI Surender Singh had registered the formal FIR Ex.PA/1 on 04.05.2006. **PW-2** Sharvan Kumar, Draftsman, proved the scaled site plan Ex.PB, depicting the place of occurrence. **PW-3** Head Constable Satya Narain, was witness to the disclosure statement made by

criminal cases. **PW-4** Constable Balbir Singh was witness to the disclosure statement suffered by Vikey @ Vikram Singh, who demarcated the place of occurrence and also got recovered the belt in pursuance of his disclosure statement, which was taken into possession vide recovery memo **Ex.PF**. **PW-5** Constable Pardeep Kumar was witness to the disclosure statements made by accused Mukesh and Parmod and they had also demarcated the place of occurrence. **PW-6** Raj Singh @ Papli had given the information to the police, after spotting the dead body of an unknown person with ligature mark on the neck. **PW-7** Inspector Surender Singh had conducted the part investigation in the case, during the period when efforts were made to fix the identity of the deceased. He had also sent the fingerprints to the FSL Madhuban for comparison and identification. **PW-8** ASI Tej Ram is witness to the disclosure statement made by accused Parmod, with regard to giving of lift to a young boy, commission of his murder and taking out amount of Rs.150/- from the person of the deceased and also throwing the dead body on the side of the road. **PW-9** Asstt. MHC Amar Singh proved the copy of DDR No.17 dated 26.04.2006. **PW-10** Head Constable Braham Parkash had handed over the parcel of the belt to ASI Ashok Kumar and proved his affidavit **Ex.PN**. **PW-11** Head Constable Prem Chand had recorded statement of Raj Singh @ Papli and made his endorsement **Ex.PA**. He had also proved the rough site plan **Ex.PO** of the place of occurrence and further proved inquest report **Ex.PP** prepared by him. The fingerprints of the deceased were also taken by him. **PW-12** Constable Manish Kumar had proved the copy of record pertaining to the case bearing FIR No.1133 dated 04.11.2006 under Sections 365, 302 and 201 IPC, Police Station DLF.

mortem examination on the dead body of deceased and following injury was found on the person of the deceased:-

“On examination of neck there was complete ligature mark running transversely all around the neck, deep .7 to 1 cm wide. Mark was present 4 cm below the chin above thyroid cartilage. On cut section subcutaneous ecchymosis were present. Muscles were contused.”

As per his opinion, the cause of death, in this case was result of asphyxia caused by ligature strangulation, which was ante mortem in nature and sufficient to cause death in natural course.

PW-14 Pawan Kumar, Photographer, proved the photographs Ex.P2 and Ex.P6 and negative thereof Ex.P7 to Ex.P11. **PW-15** Constable Prem Parkash had delivered special report in the instant case. **PW-16** Constable Anil Kumar had carried fingerprints and deposited the same in the FSL Madhuban. **PW-17** Inspector Sanjiv Kumar had interrogated accused during the course of investigation, in case bearing FIR No.1133 under Section 302 IPC, Police Station DLF, wherein, accused had made disclosure statements, with regard to their involvement in other criminal cases. **PW-18** Inspector Satyavir Singh had prepared and submitted report under Section 173 Cr.P.C. **PW-19** Constable Manoj Kumar was also witness to the disclosure statement of Vikey @ Vikram Singh. **PW-20** Inspector Ashok Kumar had recorded disclosure statement of Vikey @ Vikram Singh, wherein, he admitted his involvement in six cases. He had also interrogated Vikey @ Vikram Singh, who demarcated the place of occurrence and got recovered the belt, in pursuance of disclosure statement.

On closure of the prosecution evidence, all the incriminating

circumstances, appearing in the prosecution evidence were put to accused-appellants in their statements under Section 313 Cr.P.C. However, the accused-appellant denied those allegations. In fact, they had denied the fact of making any disclosure statement, demarcation of place of occurrence and recovery of any incriminating article, at their instance. However, no evidence was led in defence.

After hearing learned Public Prosecutor as well as learned defence counsel and on appraisal of the evidence brought on record, vide impugned judgment, accused-appellants were held guilty, convicted and sentenced, as already detailed in earlier portion of the judgment.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants-convicts have filed the present appeal. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellants as well as learned State counsel and have perused the record.

In the light of the evidence, coming on record, it has been vehemently submitted by learned counsel for the appellants that case of the prosecution hinges upon the circumstantial evidence. There is no direct evidence in the instant case with respect to murder and no evidence with regard to recovery of incriminating articles from accused-appellants Mukesh @ Ghasar and Parmod @ Bhuru. Moreover, the disclosure statement, alleged to have been made by Vikey @ Vikram Singh and recovery of belt, in pursuance thereof, does not inspire confidence. The polygraphy and brain mapping examination conducted upon Mukesh @ Ghasar and Parmod @ Bhuru, cannot be relied upon, to base conviction of the appellants. The

insufficient evidence. As such, a prayer has been made for acceptance of appeal, while setting aside the judgment of conviction and order of sentence.

On the other hand, learned State counsel has resisted the submissions, so made on behalf of the appellants. He submits that though, there is no direct evidence, with regard to the occurrence but the appellants were arrested in another case, wherein, they had made disclosure statement, with regard to the commission of murder, in the instant case also. They had identified the place of occurrence and the belt has been recovered, in pursuance of the disclosure statement made by Vikey @ Vikram Singh. He further submits that as per deposition of PW-13 Dr.Sanjay Narula, the possibility of asphyxia, being caused by the recovered belt, in the instant case, cannot be ruled out. Moreover, the accused-appellants had been non-cooperative and displayed signs of deception, which is strongly suggestive of the fact of their participation in the crime.

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 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 criminal proceedings, 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

reasonable and not imaginary, fanciful, intangible or non existent, but as entertain-able by an impartial prudent and analytical mind, judged on the touch stone of reason and common sense. 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.

In the case in hand, there is no direct evidence, to connect the accused with the commission of crime. The prosecution has mainly sought to rely upon the circumstantial evidence to prove the charges against the accused. In the event, 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. 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. Circumstantial evidence means a combination of facts, creating a net, without there being a tear, through which, the accused may escape.

To prove the culpability of a person, on the basis of circumstances, the prosecution is required to prove and establish, as follows:-

*(1) the circumstances from which the conclusion of guilt is to be drawn, should be fully established. The circumstances concerned '**must**' or '**should**' and not '**may be**' established;*

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”.

In a case of circumstantial evidence, all the circumstances must be fully established and all the facts, so established, must be consistent only with the hypothesis of the guilt of the accused. The circumstances, so established, should exclude every other possible hypothesis except one, sought to be proved. The circumstances must be conclusive in nature. The circumstantial evidence is a close companion of factual matrix, creating a fine network, through which, there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit the Court to arrive at any other inference, but one indicating the guilt of the accused. The Courts have to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof.

Now, advertng to the merits of the present case, it is pertinent to note that it is a case of blind murder. On 26.04.2006, a dead body of an unknown person was spotted and even, identification of the accused could not be established, during the course of investigation. The dead body was lying on the side of the road and there was ligature mark around the neck.

The criminal liability has been sought to be fastened upon the accused for

having committed the murder of an unknown person. The accused-appellants were arrested in another case bearing **FIR No.1133 dated 04.11.2006, under Sections 365, 302 and 201 IPC, Police Station DLF,** wherein, they had made disclosure to the effect that they had given lift to a young boy, committed his murder by strangulating with a belt, robbed him of Rs.150 and thrown his dead body on the side of the road. Such a confession, alleged to have been made by the accused before a police officer, cannot be relied upon, to arrive at guilt of the accused.

The prosecution has also put forth the case to the effect that the accused had demarcated the place of occurrence and furthermore, belt has been recovered, in pursuance of the disclosure statement made by Vikey @ Vikram Singh. It is pertinent to mention here that no incriminating article has been recovered from the possession of Mukesh @ Ghasar and Parmod @ Bhuru. Now, it has to be seen, as to whether conviction of accused, can be recorded mainly on the ground of recovery of belt, in pursuance of disclosure statement of Vikey @ Vikram Singh. It may be true that disclosure statement and resultant recovery of inculpatory material, can be looked into, to sustain the guilt of the accused but the recovery should be unimpeachable and not be shrouded with an element of doubt. In the case in hand, the occurrence took place, as back as on 26.04.2006. The arrest of the accused was effected in another case bearing **FIR No.1133 dated 04.11.2006 on 08.11.2006.** The prosecution has sought to lead evidence, with regard to the recovery of belt, alleged to have been used in the commission of murder but on appraisal of material on record, such evidence does not appear to be of unimpeachable character, reliable, trustworthy and

conviction on the strength thereupon. It is significant to note that PW-4 Constable Balbir Singh is the witness to the disclosure statement and recovery effected at the instance of Vikey @ Vikram Singh. It is emerging in his cross-examination that such like belts are easily available in the market. There was no specific mark of identification on the belt. The house was not closed. Though, the belt was lying under the clothes but the almirah was lying open. There were house adjoining to the house of the accused, from where the recovery was effected. Several persons were attracted at the spot but no independent witness was joined in the instant case. The recovery has been effected by PW-20 Inspector Ashok Kumar and he has also admitted the fact that no public person was joined, at the time, when Vikey @ Vikram Singh suffered disclosure statement and got recovered the belt. In these circumstances, the recovery of belt, alleged to have been used in the commission of crime, having been recovered, at the instance of Vikey @ Vikram Singh, cannot be termed to be reliable. There is another significant aspect, in the instant case, which raises serious doubt, with regard to the genuineness of the recovery. The occurrence took place as back as on 26.04.2006 and the present recovery has been effected after a period of more than six months and as such, it shall not be safe to convict accused, solely on the basis of such recovery.

The prosecution has tendered into evidence, the report of FSL **Ex.PZ and Ex.PZ/1**, with regard to polygraph examination and brain mapping examination respectively, pertaining to Mukesh @ Ghasar and Parmod @ Bhuru, which is as under:-

The Conclusion in the report of Polygraph Examination of the accused was as under:

“When the questions related to the crime cited above were administered to Mr. Mukesh Omkar, Mr Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput the signs of deception were seen indicating non truthfulness in their statement given. This suggests that the above mentioned accused are not truthful in their statement given and have knowledge of the crime.”

The Conclusion in the report on Brain Mapping Examination of the accused was as under:

“The major findings supported by the Brain mapping tests are indicative of the possession of knowledge about the activities listed above by Mr. Mukesh, Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput. Brain activation during information processing and generation of such ERP responses associated with target are suggestive of primary encoding information with Mr. Mukesh Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput and thus suggesting active participation of Mr. Mukesh Omkar, Mr. Pramod alias Bhuru Bijendra Singh Rajput and Mr. Rohtash alias Bablu Ved Pal Rajput.”

The prosecution has sought to built up the case to the effect that the accused-appellants were also involved in large number of other cases. Even, said report was sought to be relied upon in another case bearing **FIR No.161 dated 19.10.2006 under Sections 302 and 201 IPC** and the matter was taken by this Court in **CRA-103-DB-2010**, which was allowed and in terms of judgment dated **01.10.2020** and aforesaid reports of polygraph examination and brain mapping examination, were discarded. The same reports have been sought to be relied upon in the instant case. In the circumstances of the case, the same cannot be looked into, to derive any conclusion, with regard to the guilt of the accused.

On the appraisal of material coming on record, the chain of circumstances, in the present case, is not complete and it raises strong reasonable doubt about the offence alleged to have been committed by the

accused-appellants. We are of the considered opinion that evidence coming on record, does not establish the guilt of the accused-appellants, beyond shadow of reasonable doubt and the Court below, has arrived at recording guilt of the appellants, without sufficient, cogent and reliable evidence, justifying their conviction.

Resultantly, the present appeal stands allowed. The judgment of conviction dated 02.05.2009 and order of sentence dated 04.05.2009 passed by learned Additional Sessions Judge, Fast Track Court, Gurgaon, is set aside and accused-appellants namely Vikey @ Vikram Singh, Mukesh @ Ghasar and Parmod @ Bhuru, are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

November 03, 2021
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
Yes