

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

CRA-D-1014-DB-2012 (O&M)

Date of Decision:-22.11.2021

Murlidhar

... Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE RITU BAHRI  
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. G.S. Goraya, Advocate  
for the appellant (free legal aid counsel).

Mr. Ankur Mittal, Addl. A.G. Haryana and  
Mr. Saurabh Mago, AAG, Haryana.

Mr. A.P.S. Mann, Advocate  
for the complainant.

\*\*\*\*

**KARAMJIT SINGH, J.**

This criminal appeal has been preferred by the appellant-accused against judgment and order dated 16.8.2012/18.8.2012 passed by Sessions Judge, Rewari in Sessions case No.42-2011 (State vs. Murlidhar), FIR No.314 dated 16.9.2011 registered under Sections 302/201/34 IPC, Police Station Model Town, Rewari, whereby the accused-appellant Murlidhar has been convicted under Sections 302 and 201 of the Indian Penal Code (hereinafter to be referred as 'IPC') and sentenced to imprisonment for life along with fine of ₹5,000/- and in default of payment

of fine, he has to further undergo rigorous imprisonment for a period of one year. He was also sentenced to undergo rigorous imprisonment for a period of six years and to pay fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one year and six months. Both the substantial sentences were to run concurrently.

The brief facts of the case are that PW-16 complainant-Om Parkash was resident of Rewari. On 15.9.2011, the complainant reported to the police that his son Parmod who was matriculate, had gone to see his newly constructed house in Arjun Nagar, Rewari, on motorcycle No.HR-36-M-7342. Parmod Kumar neither returned home nor reached the house situated in Arjun Nagar. On the basis of the said information DDR No.37 dated 15.9.2011 (Ex.PL) was recorded.

On the next day i.e. 16.9.2011 at about 9:40 p.m., complainant-Om Parkash met PW-18 SI Shree Bhagwan of Police Station Model Town, Rewari and lodged a fresh report. The complainant stated that on 15.9.2011 at about 8:30 a.m. his son Parmod had left home for depositing electricity bill and to see the house of his paternal uncle Kanwar Singh husband of PW-9 Maya Devi in Sector-4, Rewari, which was under construction. In the afternoon, he came home for lunch and by that time Parmod had not returned and then he and his sister-in-law Maya Devi went to her under construction house at about 1:40 p.m. and they saw Murlidhar contractor, who had been given contract for construction of the house, coming out of the said house in a hurry and fleeing away through adjoining vacant plot towards Sector-4. Till evening they could neither find Parmod nor Murlidhar. In the evening, he lodged report with the police regarding missing of his son. The

complainant further stated to the SI Shree Bhagwan that on 16.9.2011, he along with his son Ravi Kant and Chet Ram, Municipal Councilor after searching his son Parmod at several places, had again gone to the under construction house of his brother Kanwar Singh at about 8 p.m. and as they entered the house, they saw fresh earth spread in the lobby area. The fresh earth got pressed with his right foot. When he removed the earth with his hand, he saw black colored trouser, which his son was wearing when he left home. He removed some more earth and found that the dead body of his son Parmod was lying buried, there. He was having firm belief that his son Parmod was murdered by Murlidhar contractor himself or with the help of his associate, on account of dispute over payment of contract money and non-completion of construction work. The complainant further stated that he had left his son Ravi Kant with the dead body and he himself left for the police station to report the incident, and on the way he met the police at T-point, Sector-4, Rewari. The complainant signed the said statement in token of its correctness. The said statement of the complainant which was recorded by SI Shree Bhagwan is Ex.PR. The same was dispatched to the police station and consequently FIR Ex.PR/1 was registered in the police station.

Police party headed by PW18-SI Shree Bhagwan along with complainant left for the disclosed place. The Investigating Officer also called team of government doctors, Executive Magistrate (Tehsildar) and a photographer. The photographs of the spot were taken. Dead body of Parmod which was lying buried, was exhumed. The doctors collected sample of bloodstained earth from the spot vide memo Ex.PB, in presence of

PW-2 Satya Roop, Tehsildar, Rewari. The inquest of dead body of Parmod was prepared under Section 174 Cr.P.C.. The statements of witnesses were recorded. On 17.9.2011, post-mortem examination of the dead body was conducted by board of doctors which also included PW-3 Dr.Manav Chauhan and the post-mortem report is Ex.PE.

During the investigation of the case, appellant-Murlidhar was arrested on 17.9.2011 by SI Shree Bhagwan. In pursuance of his disclosure statement, the appellant demarcated the place of occurrence vide memo Ex.PO. On the next day, he was remanded to police custody by the Court concerned and in pursuance of his disclosure, the appellant got recovered blood-stained spade used in commission of crime. The same was taken into possession by the police vide memo Ex.PI, which was attested by PW-10 Manoj Kumar. The rough sketch of the spade is Ex.PH. During further investigation on 19.9.2011, appellant suffered another disclosure statement Ex.PJ and got recovered one Nokia mobile phone having No.9729878766, 20 currency notes of ₹100/- each, one electricity bill and the clothes which the appellant was wearing at the time of occurrence having bloodstains, from his rented accommodation in the area of Vijay Nagar in the presence of PW-10 Manoj Kumar. Said articles were converted into sealed parcels and taken into possession by the police vide memo Ex.PK which was also attested by PW-10 Manoj Kumar. All the said articles were sent to the concerned forensic science laboratory for their analysis and examination.

On completion of investigation, challan was presented against the accused. On committal, the learned Sessions Judge framed charge

against the accused for offences punishable under Sections 302 and 201 of IPC. The appellant did not plead guilty and claimed trial.

At the trial to substantiate its case against the appellant, the prosecution examined in all 18 witnesses, and tendered report of FSL Ex.PA.

PW-16 Om Parkash reiterated the facts disclosed by him in DDR Ex.PL and FIR Ex.PR/1. Other family members namely PW-4 Ravi Kant and PW-9 Maya Devi also corroborated the testimony of the complainant. PW-1 Dr. Deepak Verma and PW-2 Satya Roop Tehsildar who were called at the spot by the Investigating Officer and in whose presence the dead body of Parmod Kumar was exhumed, deposed accordingly, while appearing in the witness box. PW-18 SI Shree Bhagwan being the Investigating Officer proved the entire investigation which was carried out in this case by the police. PW-10 Manoj Kumar deposed regarding the disclosures and the recoveries got effected by the appellant, pursuant thereof, he being witness to the same. PW-8 Anil Kumar was examined by the prosecution to establish that the deceased was lastly seen in the company of the appellant, near the place of occurrence on 15.9.2011. PW-3 Dr.Manav Chauhan proved the post-mortem report Ex.PE and identified clothes of the deceased as well as piece of rope removed from neck of the dead body.

After the closure of prosecution evidence, the appellant was examined under Section 313 Cr.P.C.. The defence of appellant was of denial and false implication. The appellant also stated that he is a simple mason and used to work under various contractors and he never did any construction work in the house of complainant or Maya Devi. The accused had not led any evidence in his defence.

After appraisal of the evidence and material on record, the learned Sessions Judge convicted and sentenced the appellant as stated in the opening paragraph of this judgment.

Being aggrieved and dissatisfied with the impugned judgment, the appellant has preferred present appeal.

The counsel for the appellant contended that there was no eye-witness to the alleged occurrence. The entire case of prosecution is based on circumstantial evidence, having missing links. The counsel for the appellant further contended that in DDR Ex.PL no one was named as an accused by the complainant. However at the time of recording of FIR, which was registered after the recovery of dead body, finger of suspicion was raised against the appellant without any basis.

The counsel for the appellant further contended that as per prosecution version deceased Parmod was lastly seen in the company of appellant on 15.9.2011 by PW-8 Anil Kumar. The counsel for the appellant contended that PW-8 is an interested witness being neighbour of Maya Devi. The counsel further contended that as per testimony of PW-8 Anil Kumar both Parmod and Murlidhar came on motorcycle and then went inside the under construction house after parking motorcycle outside the gate of the house. The said motorcycle was not taken into possession by the police. It is further contended that however, as per the testimony of PW-4 Ravi Kant, the said motorcycle was found lying unattended near Government Girls College, Sector-4, Rewari on 16.9.2011. The counsel for the appellant further argued that the prosecution has failed to clarify as to how the aforesaid motorcycle of deceased reached near Government Girls College.

The counsel for the appellant next argued that as per prosecution story, Parmod was murdered and then his dead body was buried inside the under construction house of Kanwar Singh. The prosecution had failed to associate owner of the under construction house, during investigation of the case. It is contended that the alleged clothes of the appellant which were recovered vide memo Ex.PK were not having any mud stains, meaning thereby that they were not worn when the dead body of Parmod was buried. The counsel for appellant further contended that it was difficult for one person to firstly dig a pit and then to bury the dead body in it.

The counsel for the appellant next argued that recovery of spade at the instance of the appellant is surrounded by suspicious circumstances. The alleged recovery was effected from open place which was accessible to all and sundry. It is further contended that PW-10 Manoj Kumar, the alleged recovery witness was not an independent witness as he was already knowing the complainant.

The counsel for the appellant further argued that prosecution has failed to prove any motive on the part of Murlidhar to kill Parmod. There is nothing on the record to show that prior to the occurrence any altercation took place between the deceased and the appellant regarding payment of contract money. It is further contended that the prosecution has failed to establish that the appellant was ever engaged as a contractor by PW-16 Om Parkash or PW-9 Maya Devi for raising any construction.

The counsel for the appellant further argued that the appellant belongs to Madhya Pradesh. Appellant did not try to run away even after

recovery of the dead body and he was arrested by the police on 17.9.2011 from within the local limits of Rewari. The appellant never absconded or tried to abscond and such conduct of the appellant goes a long way to prove his innocence.

The counsel for the appellant while summing up his arguments contended that the investigation in this case was faulty. It is further contended that even otherwise if the prosecution story is presumed to be true, there is other possible view also that Parmod was killed by some third person and not by appellant-Murlidhar. The counsel for the appellant in the end prayed for acquittal of the appellant on the ground that the prosecution has failed to establish all the pieces of incriminating circumstances by adducing reliable and clinching evidence.

On the other hand, the State counsel assisted by counsel for the complainant while supporting the judgment passed by the trial Court submitted that though there was no eye-witness to the occurrence, yet the prosecution has proved its case against the appellant to the hilt, by establishing the complete chain of circumstances. The State counsel further prayed for the dismissal of the appeal.

We have considered rival submissions and perused the record.

Admittedly, deceased Parmod Kumar was son of PW-16 Om Parkash, PW-9 Maya Devi is wife of Late Kanwar Singh, brother of PW-16 Om Parkash and PW-4 Ravi Kant is son of PW-16 Om Parkash. Undisputedly, the present case is relating to blind murder of Parmod Kumar. The entire prosecution case is based on circumstantial evidence.

As per the law laid down in **Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 Supreme Court 1622** and **C.Chenga Reddy and others vs. State of Andhra Pradesh, AIR 1996 Supreme Court 3390**, the principle that emerges is that in a case based on circumstantial evidence, Court is required to evaluate circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It is trite that the conviction can be based on circumstantial evidence alone, but for that the prosecution must establish the chain of circumstances, which consistently points to the accused and accused alone and is inconsistent with his innocence.

From the testimony of PW-16 Om Parkash it has emerged that his son Parmod left the house on 15.9.2011 and thereafter he never came back and report regarding missing of his son was got recorded by him with the police on 15.9.2011 and the same is Ex.PL. On the next day, i.e. 16.9.2011 in the evening PW-16 along with his son PW-4 Ravi Kant went to under construction house of his brother Kanwar Singh, husband of PW-9 Maya Devi and there, they found some fresh earth / soil in the lobby, which got pressed with his right foot, then PW-16 removed the earth from said spot on which, he saw black trouser of his son Parmod and on further removal of soil, the dead body of Parmod was found buried there. Then PW-16 Om Parkash reported the matter to the police and his statement Ex.PR was recorded by PW-18 SI Shree Bhagwan, Investigating Officer of this case and consequently FIR Ex.PR/1 was registered.

It is also there in evidence that the Investigating Officer (PW-18) along with the complainant reached the spot and in the meantime, the police also called team of doctors, Executive Magistrate and a photographer, who also reached there. Sample of the earth was lifted from the spot by the concerned doctor i.e. PW-1 Dr. Deepak Verma, who was the member of the team of doctors and the said sample was later on sent for its examination to FSL. The dead body was exhumed and photographs of the spot were taken by PW-6 EASI Satya Pal who proved the said photographs as Ex.P6 to Ex.P10, which were taken with digital camera. The dead body was identified as that of Parmod by PW-4 Ravi Kant, his brother. The Investigating Officer prepared inquest report Ex.PF, as per which one rope was found tied around the neck of the deceased. The Investigating Officer also prepared rough site plan of the place of occurrence Ex.PS.

The post-mortem examination of the dead body of Parmod was conducted on 17.9.2011 by the board of doctors. PW-3, Dr.Manav Chauhan was member of the medical board and he proved post-mortem report Ex.PE, as per which, the cause of death was due to asphyxia as a result of pressure on the wind pipe, which was ante-mortem in nature and sufficient enough to cause death in natural course of life. At the time of post-mortem examination double folded ligature material going around neck without any knot was found, on removing the same a double ligature mark encircling the neck was found. A lacerated wound with size 5x2 cm bone deep was also there over right parietal region. The probable duration between death and post-mortem examination was 2 to 3 days.

The appellant, in his defence has simply stated that he is innocent and has been falsely implicated. The appellant failed to establish that the complainant or other PWs were having any previous enmity with him. We are of the view that there was no reason for the complainant and other members of his family to depose falsely against the appellant. The defence has failed to point out any material contradictions/improvements in their depositions. Further, the appellant in his statement under Section 313 Cr.P.C. has admitted that he is doing the work of mason, meaning thereby that he was involved in construction of houses.

The prosecution has further relied upon the recoveries got effected by the appellant pursuant to his disclosures, in presence of PW-10 Manoj Kumar. It has emerged that PW-10 Manoj Kumar was not related to the deceased or complainant. There is nothing available on the record to suggest that the said independent witness had any animus against the appellant to falsely implicate him. The defence is also unable to demonstrate that disclosures made by the appellant were involuntary or made under police pressure. It has come into evidence that the appellant was arrested in this case on 17.9.2011 and on 18.9.2011, while in police custody he suffered disclosure and got recovered bloodstained spade from the disclosed spot vide memo Ex.PI, in presence of independent witness namely PW-10 Manoj Kumar. As per report of FSL Ex.PA, the blood stains were found on the said spade. However, the blood group of blood stains was not ascertained as the material available on the spade had already disintegrated. No doubt the said recovery of spade was effected from open space but the same was only on the pointing of the appellant. As per

Ex.PV/1, the concerned doctor gave opinion that the possibility of injury on the head of the deceased being caused by the blunt side of aforesaid spade cannot be ruled out. At the time of seeking the said opinion, the weapon of crime was shown to the doctor by the Investigating Officer. From the perusal of the testimony of PW-10 Manoj Kumar coupled with the statement of the Investigating Officer, it is also evident that while in police custody, the appellant suffered another disclosure statement Ex.PJ on 19.9.2011 and consequently got recovered one Nokia Mobile phone having No.97298-78766, 20 currency notes of ₹100/- each, one electricity bill and bloodstained clothes, which the appellant was wearing at the time of occurrence. The above mentioned articles were taken into possession by the police vide memo Ex.PK, after converting them into sealed parcels, in presence of PW-10 Manoj Kumar. The description of articles as detailed in FSL report Ex.PA shows that aforesaid clothes recovered at the instance of the appellant were having dark brown stains, meaning thereby that they were mud stained. Also as per the report of FSL Ex.PA, the aforesaid clothes recovered at the instance of the appellant were found to be stained with human blood. The appellant has failed to explain as to how blood stains appeared on his aforesaid clothes. Even the earth which was lifted from the place of occurrence vide memo Ex.PB, was found to be blood-stained as per report of FSL Ex.PA.

It is evident that PW-8 Anil Kumar was living in the neighbourhood of under construction house of PW-9 Maya Devi from where the dead body of Parmod was recovered. He is most natural witness, who on 15.9.2011 saw that deceased Parmod along with the appellant came on

motorcycle and after parking the motorcycle, both of them entered the aforesaid house of Maya Devi. The defence counsel failed to put any dent in his testimony during his cross-examination. So no ground is made out to disbelieve the testimony of PW-8. Thus it stands fully proved that on 15.9.2011 deceased Parmod was lastly seen in the company of appellant-Murlidhar by the neighbour of PW-9 Maya Devi.

Admittedly, Kanwar Singh husband of PW-9 Maya Devi had died prior to the present occurrence. So the question of his joining the investigation does not arise at all. It is significant to notice that PW-4 Ravi Kant and PW-9 Maya Devi, while appearing in the witness-box specifically deposed that appellant Murlidhar was engaged by their family to construct house of the complainant as well as that of PW-9 Maya Devi. From the perusal of their testimony, it is evident that the accused was demanding balance charges of construction raised by him, whereas deceased Parmod was insisting that firstly the appellant should complete the entire construction work. It is also there in the statement of PW-9 Maya Devi that deceased Parmod Kumar was managing the construction work on her behalf. Further, as per testimony of PW-9, it appears that even on 14.9.2011 in the evening the appellant got annoyed and went away, when deceased Parmod asked him to complete the construction work and only then he would get the balance amount. Thus making it clear that prior to the present occurrence, the appellant got annoyed with deceased Parmod, who was asking him to firstly complete the construction work and then only to get the balance wages. So prosecution has been able to prove the motive behind the present occurrence.

Furthermore, PW-9 and PW-16 while appearing in the witness-box specifically stated that on 15.9.2011 in the afternoon when both of them went to see the under construction house of PW-9 Maya Devi, they saw appellant Murlidhar going away from there, hurriedly after saying something.

It is pertinent to notice that at the first instance when DDR Ex.PL was lodged, the complainant and other members of his family did not suspect any foul play and that is why no one was named as a suspect in the said report by PW-16 on 15.9.2011. On the next day i.e. 16.9.2011, FIR (Ex.PR/1) was promptly lodged, immediately after PW-4 and PW-16 found dead body of Parmod Kumar lying buried in the under construction house of Late Kanwar Singh husband of PW-9 Maya Devi. On getting the said information, the police came into action and completed the proceedings under Section 174 Cr.P.C. On the very next day i.e. 17.9.2011, the appellant was arrested by the police, without giving him any chance to abscond.

Definitely the Investigating Officer had not made any effort to locate the motorcycle of deceased Parmod Kumar, which as per the testimony of PW-4 was later on found lying abandoned near Government Girls College, Rewari. However, we are of the view that there is no need to give an undue importance to such omission on the part of Investigating Officer. There are chances that the appellant took away the said motorcycle, after commission of crime, when no one else was present in the aforesaid under construction house.

To our mind, no probable defence was set up by the appellant to show that at the time of the occurrence he was not available at the spot. The

sum of the circumstances as discussed above, leads us to only one conclusion that it was appellant who committed murder of deceased Parmod Kumar.

In the light of above discussion, we do not find any fault with the reasoning given by the learned trial Court regarding the guilt of the appellant, being fully established.

Resultantly the present appeal is dismissed.

**(RITU BAHRI)**  
**JUDGE**

**( KARAMJIT SINGH)**  
**JUDGE**

**22.11.2021**  
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No