

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-D-432-DB-2010

Reserved on: 31.08.2022

Pronounced on: 05.09.2022

PAPPU SINGH SON OF IMRAT @ CHITA SINGHAppellant

Versus

STATE OF HARYANARespondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Argued by: Mr. R.S.Malik, Advocate
for the appellant.

Mr. P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The learned Additional Sessions Judge, Rewari through a verdict drawn on 06.03.2010, upon case SC No. 31 of 2009, proceeded to, in respect of charges drawn against the accused for an offence punishable under Section 302 of the IPC, hence make a verdict of conviction, upon, the convict. Moreover, through a separate sentencing order drawn on 06.03.2010, the learned trial Judge concerned, imposed upon the convict, the sentence of life imprisonment, besides imposed upon him, a sentence of fine comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment extending upto a term of one year.

2. The convict becomes aggrieved from the verdict of conviction (supra), and, also become aggrieved from the consequential therewith sentence(s) (supra), as became imposed upon him by the

learned Convicting Court, resultantly he becomes led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

3. The factual genesis of prosecution case, becomes embodied in the appeal FIR, to which Exhibit PE is assigned. The informant Mahabir Singh Ex-Sarpanch, resident of village Bhotwas Bhondu, made narrations therein that they are three borthers. Prem Singh (deceased) is the youngest. They all are married, and, living separately. His brother Prem Singh has taken the land measuring 30 killas with two tubewells from Virender son of Khajan Singh for cultivation in a sum of Rs. 2.5 lacs, and, the land was being cultivated by the deceased with his own tractor. However, two months ago, deceased Prem Singh had kept Pappu son of Imrat Singh, as a servant for a monthly salary of Rs.3500/-for doing the agriculture work. On 25.09.2009 at about 6/7.00 p.m., his nephew Naveen son of Prem Singh while leaving his father, and, Pappu at the tubewell came back to his house. On 26.09.2009 at about 9.00 a.m., when his nephew Naveen went to the tubewell, he found that the door of the tubewell room was locked. He was under an impression that his father has gone somewhere, and, would be coming back after some time. His nephew started ploughing the fields. However, after ploughing two acres of land, Naveen again came to the tubewell, but found the room locked again. Naveen peeped into the room from the rear window, and, saw that his father was lying on the cot in a pool of blood. His nephew Naveen called him in the fields, and, he along with the villagers reached there, and, broke open the lock. He found his brother Prem Singh lying dead with injury over neck with clotted blood. The crime of

weapon i.e. *Kulhari* was also lying in the room itself, but Pappu was missing. He has suspicion that Pappu after committing the murder of his brother had fled away. About one week ago, Rs. 5000/- were found missing from the pocket of the pant of his brother Prem Singh. On the relevant day also, no money was found in the pocket of his brother Prem Singh, though, Prem Singh always used to carry Rs. 5000-7000/- in his purse. Out of the greediness, Pappu is alleged to commit the murder of his brother Prem Singh.

4. On the basis of the statement of the complainant, to which Exhibit PH, is assigned, Inspector Deen Dayal carried out the police proceedings, and a formal FIR, was registered, and, thereafter investigations became launched. The post-mortem on the dead body of the deceased was conducted vide post-mortem report Exhibit PB. The photographs of the dead body, and, also of the scene of crime were got prepared. The inquest proceedings under Section 174 of the Cr.P.C., also were conducted. Rough site plan of the place of occurrence was prepared, to which Exhibit PU is assigned. The weapon of crime Exhibit MO3, was recovered vide memo Exhibit PJ. The accused was arrested. The statement of witnesses under Section 161 Cr.P.C. were recorded.

5. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

COMMITTAL COURT PROCEEDINGS

6. As the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the learned committing Court,

committed the case to the Court of the learned Additional Sessions Judge, Rewari.

TRIAL COURT PROCEEDINGS

7. On finding a prima facie case, charge(s) under Section 302 IPC became framed, against the accused, and, to which he pleaded not guilty, and, claimed trial.

8. In support of the prosecution case, the prosecution examined twelve witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Rewari drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence.

9. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Rewari, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the present appellant.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

10. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentence (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross misappreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

11. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and does not warrant any interference.

CIRCUMSTANTIAL EVIDENCE BASED CASE, DEPENDENT UPON THE TESTIMONIES OF PW-7, PW-10 AND PW-11.

12. The prosecution witnesses (supra) though do not render a vivid ocular account qua the crime event, and obviously so, as they are not eye witnesses to the occurrence, but one amongst them PW-10 Naveen Kumar on 26.09.2009, upon visiting the tubewell co-inhabited by the deceased Prem Singh, and, by the convict, and, upon his finding it locked from outside, and, thereupon on his peeping into the tubewell, his sighting the deceased Prem Singh to be lying in a pool of blood, on the ground beneath the cot.

13. PW-10 Naveen Kumar purveyed the above intimation to PW-7, and, to PW-11. All above alongwith the co-villagers reached the crime site depicted in site plan, to which Exhibit PU is assigned, and, after breaking the lock of *kothra*/tubewell, they noticed that Prem Singh was lying dead in a pool of blood. They also noticed that the accused-convict was not found there, thereupon, suspicion became aroused that he had committed the murder of deceased, as both were sleeping together on the previous night in the tubewell/*kothra*.

14. The above narrated factual matrix becomes testified in Court by PW-10, besides also becomes testified by PW-7. A reading of their respective testifications discloses, that each consistently deposing, that the deceased though always kept Rs. 5000/-in his pockets, but the above sum of money was not, at the relevant time, rather found existing

in the pockets of his trouser, and, but obviously, the PWs (supra) consistently deposed, that the convict had committed the murder of deceased Prem Singh, for grabbing the above money.

15. Furthermore, the factum of the PWs concerned, breaking open the lock of the *kothra*, which evidently on the previous night, became co-inhabited by the convict, and, the deceased, and, thereafter's theirs' noticing the body of the deceased to be lying, in a pool of blood also becomes consistently testified by the PWs (supra). A further incisive reading of their respectively made testifications, discloses that they have spoken the above facts, without any blemish of any inter-se, or, intra-se contradictions occurring in their respectively made testifications. Therefore, credence is to be assigned to their consistently made testifications.

16. Be that as it may, since they are not ocular witnesses to the occurrence, therefore, it became incumbent upon the prosecution, to also cogently establish, that after the making of a signed disclosure statement(s), the convict, rather through subsequently thereto drawn recovery memo(s) also causing the recoveries of all the incriminatory items, to the investigating officer concerned. The above provenly validly drawn memo(s) would but firmly connect the convict in the commission of the charged offence.

DOCUMENTARY EVIDENCE, DISCLOSURE STATEMENTS

17. The investigating officer concerned, during the course of his conducting investigations into the crime event, did proceeded to record a signed disclosure statement of the convict, and, to which Exhibit PN is assigned. The contents of the signed disclosure

statement, as made by the convict, before the investigating officer concerned, are ad verbatim extracted hereinafter.

“ on dated 25-09-2009 in the day I had seen Prem Singh putting the money in his pocket. On which I feel to grab the money and for this after taking the meal of night when I and Prem Singh were slept in the Tubewell Kothra on separate cot. I was awaking and Prem Singh had slept. Then I took over the kulhari which was in the kothra and attack on the neck of Prem Singh from that kulhari when he was sleeping. Due to this Prem Singh has died on the spot. After brought out Rs. 2500/- from the pant pocket of Prem Singh, and his half body was covered by me with the quilt. After locked the kothra from out side the key was thrown by me in the near by Bajra crop. I put off my clothes which were weared by me at the time of incident and hide them in the heap of dust near the tubewell kothra and after wearing the another clothes and went on Railway Line through Bajra crop. I reached at Railway Station Jatusana after walking on the Railway Lines. From there I travelled in the train that was going to Mathura and from Mathura I reached at Damoh. Thereafter I went to my sister Ambo at village Manpasad, where I stayed for one day thereafter I had gone to my another sister Maya at Kharo. On the second day I came back at house of my sister Ambo at Manpsar. When I reached there police came and villagers handed over to me to the police and police brought me here and all the story told by me to you. I had spent Rs. 2500/- which were stolen from the pocket of Prem Singh. I can recover the thrown key of Kothra and clothes which were hidden by me after proper identification. Disclosure statement of accused was recorded which was signed by the accused and witnesses.”

18. A reading of the signed disclosure statement, as made by the convict before the investigating officer concerned, reveals that not only he confessed his guilt in committing the murder of the deceased, but also confessed qua his removing a sum of Rs. 2500/- from the pocket, of the trouser worn at the relevant time by the deceased Prem Singh. Moreover, he also vividly discloses therein, that the clothes which he was wearing at the relevant time were taken of by him, besides were changed with new clothes, and, further that he had hidden the relevant clothes in the heap of dust of tubewell *kothra*.

**INFERENCES FROM THE ABOVE SIGNED
DISCLOSURE STATEMENT OF THE CONVICT**

19. Readings of the hereinabove above extracted signed disclosure statement, as made by the convict to the investigating officer, stems the following inferences :-

a) qua his proving the motive for his committing the crime event, inasmuch as, his developing avarice to grab the money which the deceased Prem Singh was carrying with him.

b) his confessing about his committing the crime event through his proceeding to assault deceased Prem Singh, by striking a *kulhari* blow, at the neck of deceased Prem Singh, and, that too, while he was asleep.

20. The convict has further spelt therein, that he had spent the amount of Rs. 2500/-, as became removed by him, from the pockets of the trousers worn, at the relevant time, by the deceased, but yet he has disclosed therein to ensure the causings of recovery of the other incriminatory items, inasmuch as, of the key of the *kothra*, and, also the clothes which he was wearing at the relevant time, and, as became hidden by him, at the place concerned.

RECOVERY MEMO(S)

22. In pursuance to the above signed disclosure statement being made by the convict, he through recovery memo drawn/ comprised in Exhibit PO, caused the recovery of the above incriminatory items to the investigating officer concerned.

23. Significantly, the recovery of *kulhari* was not effected at his instance, as it was found lying at the crime site.

CONCLUSION

24. The legal effect of the above drawn memo(s), especially when, on the disclosure statement embodied in Exhibit PN rather the signatures of the convict exist, and, also when in pursuance thereto through memo drawn in Exhibit PO, the recoveries of the relevant incriminatory items became effected, at his instance, to the investigating officer concerned, is that, the prosecution therethrough proving the commission of the charged offences by the convict. The above made inference, would get scuttled only when evidence emerged, with a trite display therein, that the convict had ably denied the existence of his signatures on Exhibit PN, and or, evidence surfaced in personification qua his signatures as made thereons, were under duress or pressure becoming exerted upon him. However, the above evidence is grossly amiss, resultantly the utmost evidentiary sanctity is to be meted to Exhibit PN, besides is also to be meted to the consequent therewith recoveries, as became effected, through a recovery memo to which Exhibit PO is assigned. The reason for assigning credence thereto becomes sparked from the factum, that Exhibit PO is not only signed by the witnesses thereto, but is also signed by the convict, and, with the convict not ably denying his signatures, as carried thereons, and, rather with PW-11, a common witness to Exhibit PN, and, to Exhibit PO, efficaciously proving the contents drawn therein. Though PW-11 denied the defence suggestion(s) which became meted to him, for belying the contents carried therein, but, when no further proof became adduced to prove the apposite denials, therefore, the makings of above bald denied suggestion, are totally inconsequential. In sequel, reinforced evidentiary vigour is to be

assigned to the above drawn memo(s). Moreso, when even the investigating officer concerned, during his examination-in-chief, has proven his drawing the above memo(s), and, also has during the ordeal of his facing cross examination, has not been suggested, that the above drawn memo(s) were fictitiously drawn, and, or were a sequel of his ingenuously preparing them.

MEDICAL EVIDENCE/POST MORTEM REPORT

25. The medical evidence, in support of the depositions of PWs (supra), and, also in support of the above made inference appertaining to valid drawing of memo(s) (supra), besides appertaining to the cogent proof emerging qua the truth of the contents occurring therein, does also becomes comprised in the post-mortem report, as became prepared, by the doctor concerned, and to which Exhibit PB is assigned. Exhibit PB has been proved by PW-1, and, also when the ante mortem injuries, as observed therein to be occurring on the body of the deceased, and, which become extracted hereinafter, did also ultimately became opined thereins, to beget the demise of the deceased. Resultantly the prosecution has proven the user, rather of a *kulhari* by the convict, on the relevant portions of the body of the deceased.

26. In sequel, the cause of demise of the deceased, as becomes spelt in the post-mortem report, does assign credence to the prosecution version, qua it becoming related to the user by the convict of a *kulhari*, hence on the relevant portions of the body of the deceased.

“ In my opinion, cause of death in this case was due to tracheal injuries and severage large vessels of neck on right side. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of life.”

FSL REPORT

27. The incriminatory items, as became recovered through the recovery memo comprised in Exhibit PO preceding wherewith, a signed disclosure statement of the convict was drawn, and, as becomes embodied in Exhibit PN, and, became as proven by the investigating officer concerned, also became sent to the serologist working at the FSL concerned, for the latter hence making an opinion whether the blood stains' carried on the relevant items rather belonging to the blood group of the deceased.

28. A perusal of the report of the FSL to which Exhibit PK is assigned, and, which becomes extracted hereinafter, though does reveal that the cloth parcels concerned, hence carrying thereons the seal impressions as reflected therein, rather matching with the seal impressions, as become earlier made thereons by the investigating officer concerned. However, the FSL concerned, on making an examination of the blood stains' carried on the relevant incriminatory items, has in Exhibit PK relented from making an affirmative opinion, qua the stains' of blood, if any, carried thereons also belonging to the blood group of the deceased. Consequently, there is an inconclusivity of an opinion by the FSL concerned, appertaining to the blood stains' carried on the incriminatory items concerned, belonging to the blood group of the deceased.

“.... Laboratory examinations were carried out to detect the presence of blood on the exhibits through chemical tests. Blood thus detected was subjected to serological tests to determine its species of Origin & Group. Based upon these examinations the results obtained are given below :-

1. Exhibit-1 (Cotton swab), Exhibit-2 (Baan), Exhibit-3 (kulhari), Exhibit – 4a(Shirt), Exhibit-4b (pants), Exhibit-4c (Kacha) and Exhibit – 5a (Shirt) were stained with blood stains.

2. Exhibit-5b (Pants) was stained with few blood stains....”

29. Nonetheless, the above inconclusivity of opinion, does not yet foster any conclusion from this Court, that the convict deserves a finding of acquittal becoming recorded qua him. The above inference becomes grooved in the trite factum, that it is only attributable to a deep fault, on the part of the investigating officer concerned, to ensure the makings of appropriate inter-se matchings inter-se the blood stains' carried on the incriminatory items, with the blood group of the deceased. The reason being that, he failed to collect from the family members of the deceased the FTM Card, revealing therein the blood group of the deceased. Only, if the above had been done, and, was thereafter purveyed to the serologist concerned, to ensure qua his becoming ably facilitated to make the best inter-se comparison(s) or inter-se matchings, and, only if then the serologist concerned, had opined that there is complete want of inter-se matchings, rather than a verdict of acquittal was amenable to become recorded by this Court, otherwise not.

30. Reiteratedly, since the FTM Card, depicting the blood group of the deceased never became collected by the investigating officer concerned, rather from the family members of the deceased, and, also when it did not become sent to the FSL concerned, alongwith the other relevant incriminatory items, thereupon, the serologist concerned, became unable to make the best appropriate inter-se matchings. Consequently, also any inconclusivity of opinion in respect of the blood stains' carried thereons, rather belonging to the blood group of the deceased, does not at all yet lean this Court to draw a verdict of acquittal qua the convict.

POST CRIME CONDUCT OF THE CONVICT

31. The post crime conduct of the convict, inasmuch as, his fleeing from the crime site, and, also his rather remaining away from the village concerned, for a considerable period of time, is both relevant, as well as, is admissible. Since the above post crime conduct of the convict, is proven from his signed disclosure statement, to which Exhibit PN, is assigned, resultantly it does reveal his conduct which is completely in-consistent with his innocence. Therefore, this Court hence becomes constrained to conclude that no finding of acquittal is renderable qua him.

FINAL ORDER BY THIS COURT

32. In consequence, there is no merit in the appeal, and, it is dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra) are affirmed and maintained.

33. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

05.09.2022

kavneet singh

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