

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

CRA-D-854-DB-2010 (O&M)

Reserved on: 30.08.2022

Date of decision: 05.09.2022

DINESH KUMAR

...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sonia Sharma, Advocate
for the appellant

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict made on 29.07.2010, upon Sessions Case No.42 of 14.10.2009, by the learned Sessions Judge, Bhiwani, wherethrough she proceeded to, in respect of a charge drawn against the accused for offences punishable under Sections 302 of IPC, and, 201 of IPC, make a verdict of conviction, upon the convict, and, also through a separate sentencing order drawn on 31.07.2010, proceeded to impose sentence of life imprisonment, upon the convict, qua an offence punishable under Section 302 of IPC, besides imposed a fine of Rs.10,000/-, upon him, and, in default of payment of fine, she sentenced him to undergo rigorous imprisonment, for a further period of six months. Moreover, she also proceeded to sentence the accused to undergo rigorous imprisonment, for a period of seven years, in respect of an offence punishable under Section 201 of IPC, besides imposed upon him a sentence of fine comprised in a sum of Rs.5,000/-, and, in default of

payment of fine she sentenced him to undergo rigorous imprisonment for a further period of three months. Both the sentence(s) were ordered to run concurrently, and, the period spent by the accused in custody during investigation, and, trial was ordered to be set off, in consonance with the provisions, as, carried in Section 428 of the Cr.P.C.

FACTUAL BACKGROUND

2. The genesis of the prosecution case becomes embodied in Ex.P2 thereon, on 28.02.2009 by Dalip Singh in the disclosure therein that his son Lakhpat had two children, namely deceased Mohit, who was aged a year, and, 9 months, and, a daughter aged about 9 months. Further mentioned that Kartar Singh who was their neighbour often used to take his grandson Mohit out and sometimes Kartar's son Dinesh used to take the child and the child was happy in his company. On 21.8.2009 Dinesh took the complainant's grandson at 7.30 p.m. The complainant's son Lakhpat and Karambir Singh were also at home at that time. The complainant mentioned that at 9.00 p.m., Dinesh called from his mobile phone no.9812633613 on the mobile phone no.9991190660 and spoke to Lakhpat and asked about Mohit. Lakhpat responded that he might be sleeping. Dinesh stated that child was with him and would not be returned. The complainant immediately informed his family. At the same time Balwan Singh, brother of the complainant told that he had seen Dinesh near the fields at about 8.00 p.m., and Mohit was in his lap. The complainant and his family started searching for the child. The whole night they were in the fields. At about 6.00 a.m., they found the dead body floating in a well. The complainant also mentioned that Dinesh had not returned home that night and it was Dinesh who had killed his grandson and had thrown the dead body in the well. The police registered FIR at 10.30 a.m. The accused was apprehended on 24.8.2009 and he

got mobile phone bearing no.9812633613 recovered. The accused also suffered a disclosure statement Ex.P5 and pointed out the place vide memo Ex.P6. The police also collected the call records Ex.P25 and Ex.P26. After the completion of investigation, the challan was filed under Sections 302/201 IPC.

COMMITTAL PROCEEDINGS

3. The case was committed to the Court of Session vide order of 06.10.2009.

TRIAL PROCEEDINGS

4. A charge was framed against the accused under Sections 302/201 IPC. The accused pleaded not guilty to the charged offence (supra), and, rather claimed trial.

5. The prosecution examined as many as 13 witnesses, and, the learned Public Prosecutor closed the prosecution evidence.

6. Subsequently, the accused was examined under section 313 of Cr.P.C. to explain the circumstances which appeared against him in the prosecution case. He denied the prosecution allegations, and, pleaded innocence, and, also claimed false implication. No defence evidence was however led by him.

SUBMISSIONS OF COUNSEL

7. The learned counsel for the appellant, has made a vigorous submission before this Court that, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as become respectively recorded, and, imposed upon the convict, by the learned trial Judge concerned, does suffer from a gross perversity, absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. Consequently, he has argued that the impugned verdict be quashed, and, set aside.

8. The learned counsel for the appellant, has argued before this Court that the disclosure statement, as made by the convict, and, to which Ex.P3 is assigned, wherein he confessed his guilt in smothering the mouth, and, neck of the deceased, and, thereafter his throwing him into a well of Fateh Singh, besides wherein, he made a confession that his making a call, from his mobile No.9812633613 to Poonam on the latter's mobile No.9728129742, and, thereafter over the mobile number of Lakhpatt bearing No.9991190660, hence conveying them, that they shall henceforth not see Mohit, rather is hit by the provisions of Section 24, of the Indian Evidence Act. He rests the above submission on the ground, that even if subsequent to above signed disclosure statement of the convict, and, to which Ex.P3 is assigned, rather the recoveries of the mobile phone of the convict, became effected, through a recovery memo enclosed in Ex.P4, but he submits, that since the call detail records in respect of the above *inter-se* conversations, has not been produced on record, and, nor when the sound recordings enclosed therein, has been adduced on record, nor when after apposite matchings being made by the Forensic Expert concerned, the latter opining that the voices concerned, being the voices of the communicators concerned. Resultantly, he further argues that hence the simpliciter bald confession of guilt, especially in the absence of the evidence (*supra*), is hit, by Section 24 of the Indian Evidence Act. In consequence, he submits that a verdict of acquittal, is to be made, upon the convict.

ANALYSIS OF THE COURT

THEORY OF LAST SEEN

9. For the reasons to be assigned hereinafter the above submission cannot be accepted by this Court. The first and foremost reason for dispelling the above argument becomes rested, upon an analyses being made qua the

deposition of PW-3, who in his examination-in-chief, has spelt a version, which is completely consistent with the genesis of the prosecution case, as becomes embodied in the appeal FIR. The conspicuous fact which emerges, on a reading of his examination-in-chief, is that, since at about 7.30 p.m., on 21.08.2009, the accused had taken to play with the deceased, and, with the above act of the convict not arousing suspicion, in the minds of the deceaseds' parents, given the convict taking to previously play with the deceased, but yet subsequently the deceased evidently not returning home, hence initially a futile search being made about his whereabouts, and, thereafter resulting in a wider search being made, which resulted, in the morning of 22.08.2009, the body of deceased Mohit being found in the waters of an abandoned well. The above echoings occurring in the examination-in-chief of the complainant, who stepped into the witness box as PW-3, do unearth, the trite incriminatory fact, qua the convict being last seen in the company of the deceased, and, if so, the above fact became enjoined to become shred of its efficacy, through a rigorous cross-examination being made upon him. Though PW-3 became subjected to the ordeal of an exacting cross-examination by the learned defence counsel, hence for eroding the efficacy of the above testification, rather propagating the incriminatory fact of the convict being last seen in the company of the deceased, but all the defence suggestions appertaining, to denial of the above theory of last seen, rather became completely denied by PW-3. The consequential effect thereof, is that, the prosecution has been able to prove, that the deceased Mohit was last seen in the company of convict Dinesh, and, but as a natural corollary, the effect of the above made submission of the learned counsel, for the convict-appellant, becomes completely devoid of force.

10. The further reason for making the above inference, becomes grounded in the factum, that the propagation by the prosecution, through PW-3 of the incriminatory theory of the convict being last seen in the company, of the deceased also becoming cemented, besides becomes corroborated, from the deposition, as, made by PW-3. A closest reading of the deposition of PW-3 does make candid unveilings that therein he has deposed that, on the evening of 21.08.2009, when he was returning from his fields he had last seen the convict, whom he identified also, in Court hence to be carrying the deceased Mohit in his laps. Even PW-3 became subjected to the ordeal of a rigorous cross-examination, but he also denied all the defence suggestions, as, became then put to him by the learned defence counsel, and, appertaining to the above made echoings in his examination-in-chief rather becoming ingenuously engineered, and, prevaricated.

11. If so with PW-3, and, PW-5 deposing with unanimity in respect of the convict being last seen in the company of the deceased minor child, besides when their respective testifications are free from any taints of gross improvements or embellishments, being made by each of them, upon their respectively made previous statements recorded in writing. In aftermath credence is to be assigned, to their respectively made testifications, with the resultant effect, that the prosecution has succeeded in proving the incriminatory factum, of the minor child Mohit being last seen in the company of convict Dinesh. The convict has not been able to either purvey any credible explanation in respect thereof, nor has been able to adduce any cogent evidence qua the above trite factum being contrived or engineered, at the instance of PW-3, therefore the above omission works adversely to him, and, but also constrains this Court, to affirm the findings of conviction, as became recorded against him.

MEDICAL EVIDENCE

12. The macabre incident of the convict causing the demise of the infant deceased, through his smothering his neck, and, face, and, which ultimately led the minor child to suffer a fatal asphyxia, becomes supported by the post mortem report, as became drawn by the Doctor concerned, and, to which Ex.P7 is assigned. PW-7 though in his cross-examination, admits a defence suggestion that there was no strangulation or injury on the mouth, neck or nose of the minor deceased, but the above non-appearance thereons, is inconsequential, as the deceased was an infant, aged about 1 year and 9 months, resultantly, when he could not ever resist the above pressure caused over the relevant regions by the convict, but rather the exertion of a minimal pressure by the convict, over the above regions of the body of the deceased minor child, was sufficient to cause his demise through asphyxia, and, without any further strengthened muscle pressure being required. Moreover, conspicuously given there being no strength in the minor child, to resist even the minimal effective application of force by the convict, on the relevant regions of his body. Therefore, the non-occurrence of the above strangulation marks or injury marks on the neck of the deceased minor child, is completely inconsequential. The judicial conscience of this Court, is shocked by the brutal murder of an infant.

13. Be that as it may, the above firm opinion, as, made by the author of PMR, to which Ex.P7, is assigned, does also completely forestall any argument, as made before this Court by the convict, that the deceased minor child, had accidentally slipped into a well. More so, when the above fact is efficaciously belied by the prosecution through PW-3, and, PW-6, both of whom cogently prove the trite incriminatory factum of the deceased minor child being last seen, in the company of the convict.

FINAL ORDER

14. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed.

15. Records be sent down forthwith.

16. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

05.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>