

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

**CRA-D-862-DB-2010 (O & M)**

**Reserved on: 05.09.2022**

**Pronounced on: 07.09.2022**

LACHHMAN RAM

.....Appellant

Versus

THE STATE OF PUNJAB

.....Respondent

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

Argued by: Mr. Kapil Aggarwal, Advocate  
Amicus Curiae for the appellant.

Ms. Ishma Randhawa, Addl. A.G., Punjab.

\*\*\*\*

**SURESHWAR THAKUR, J.**

1. The learned Sessions Judge, Ferozepur through a verdict drawn on 28.08.2009, upon case SC No. 3 of 2008, proceeded to, in respect of charges drawn against the accused for an offence punishable under Section 302/34, and, under Section 201 of the IPC, hence make a verdict of conviction, upon, the convict.

2. Moreover, through a separate sentencing order drawn on 31.08.2009, the learned trial Judge concerned, imposed upon the convict, the sentence of life imprisonment qua an offence punishable under Section 302 IPC, besides imposed upon him, a sentence of fine comprised in a sum of Rs. 3,000/-, and, in default of payment of fine

amount, he sentenced the convict to undergo rigorous imprisonment extending upto a term of six months. In addition, for an offence punishable under Section 201 IPC, he sentenced the convict to undergo rigorous imprisonment for three years, besides imposed upon him, a sentence of fine comprised in a sum of Rs. 1000/-, and, in default of payment of fine, he sentenced the convict to undergo rigorous imprisonment for two months. Further, he ordered that the period spent in custody during investigation, inquiry, or, trial be in consonance with the provisions of Section 428 Cr.P.C, set off, from the above imposed term of sentence(s) of imprisonment.

3. 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.

4. Though, co-accused Punit Kumar Aggarwal is alleged to also alongwith the present convict commit the offences (supra), but he was declared a proclaimed offender, necessarily he did not participate in the trial as became opened only against the present convict-appellant. Since co-accused Punit Kumar Aggarwal has remained absconding since the year 2007, therefore, the Senior Superintendent of Police, Ferozepur is directed to, forthwith cause his arrest, and, thereafter to ensure his production before the learned Committal Court concerned, to enable the latter to draw committal proceedings against him, for his subsequently facing trial qua the FIR offences, before the learned Court of Session, who shall then adopt the statutory mechanism envisaged in

Section 299 Cr.P.C.

### FACTUAL BACKGROUND

5. The genesis of prosecution case, becomes embodied in the appeal FIR, to which Exhibit P-3 is assigned. The present FIR is lodged at the instance of the father of the deceased Sunil Kumar. A narration is carried therein, that on 18.09.2007, at about 6.30 P.M. one Sant Ram son of Chet Ram, resident of Ward No. 8, Tibbi purveying an information levelling allegations therein, that he has two sons namely Subhash Chander, and, Sunil Kumar. He alongwith his family is residing in Ward No. 8, Tibbi. Accused Lachhman Ram resident of village Taja Patti started living in the house of Om Parkash son of Kurara Ram about 5/6 years ago. Lachhman Ram is closely related to said Om Parkash. Lachhman Ram accused was engaged in the work of worship, and, *Tantrik*. Sant Ram (complainant) started visiting the house of Om Parkash, where Lachhman Ram accused had started doing worship by constructing a temple in his house. His (Sant Ram's) son Sunil Kumar started learning the work of worship, and, *Tantrik* from Lachhman Ram. They also used to give answers to the personal questions asked by the visitors. In the month of June, 2003, accused Lachhman Ram left the house of Om Parkash, and, started living and doing worship, and, working as *Tantrik* in Sant Ram's house. Near the house of Om Parkash, there was rented house of Punit Kumar Aggarwal, who alongwith Lachhman Ram used to sell the articles of retail together in partnership. So, in this way, Punit Kumar Aggarwal also used to visit his house frequently. In the year 2006, three days prior to the festival of Raksha Bandhan, complainant Sant Ram had gone to Sirsa, whereas his wife Daropati, and, other family members were in the house. Lachhman Ram, and, Punit Kumar Aggarwal alongwith his son

Sunil Kumar went to village Taja Patti in connection with worship. Though, Lachhman Ram, and, Punit Kumar Aggarwal returned to village Tibbi, but his son Sunil Kumar did not return. When he enquired from Lachhman Ram about his son Sunil Kumar, he disclosed that Sunil Kumar has got employment at Abohar. Even thereafter Lachhman Ram remained stayed in his house. Lachhman Ram accused visited Abohar twice, or, thrice, and, made telephonic calls to the complainant by impersonating himself, as Sunil Kumar. Even he also used to enquire about the well being of his family. As and when he used to talk telephonically, he used to change his voice representing himself to be Sunil Kumar. Then accused left his house, and, had gone missing. Complainant alongwith Nathu Khan, Bhoj Raj, and, Jarnail Singh started tracing out the whereabouts of accused Lachhman Ram, and, ultimately on 17.09.2007, he was found by them at village Soniasar, Tehsil Doonger Garh, District Bikaner in the house of his relative. When they enquired from him about Sunil Kumar by exercising pressure upon him, he disclosed that he, and, Punit Kumar Aggarwal had committed the murder of Sunil Kumar by strangulating him with a piece of cloth in the deserted area of sand dunes of village Kundala, near village Taja Patti, and, while taking a spade from the orchard of Kuldeep Siag, buried the dead body by digging a pit in the said sand dunes in the area of village Kundala. It was further disclosed by him that Sunil Kumar was murdered by him, two days prior to Raksha Bandhan. Punit Kumar Aggarwal, who was residing near their house on rent had also left the said room, and, went to his maternal uncle about two, and, a half months earlier. It has further been alleged that Lachhman Ram, Punit Kumar Aggarwal, and, Sunil Kumar had gone to

village Taja Patti in connection with worship, where they both i.e. Lachhman Ram, and, Punit Kumar Aggarwal in connivance with each other killed his son, and buried the dead body in the sand dunes of village Kundala, in order to screen away the evidence.

### **INVESTIGATION PROCEEDINGS**

6. Since from the statement of complainant, the place of disappearance of the deceased, was found to be within the jurisdiction of Police Station, Abohar, hence, the above said FIR as became initially, registered at Police Station, Tibbi, District Hanumangarh, did subsequently become despatched by the Rajasthan police to the SSP, Ferozepur for investigations thereinto being launched by the authorized police officer.

7. After investigations into the present FIR becoming launched, the investigating officer concerned, arrested accused Lachhman Ram, on 29.09.2007. During the course of the accused being subjected to custodial interrogation, he suffered a disclosure statement, to which Exhibit P-4 is assigned, wherein he made a confession that he alongwith Punit Kumar Aggarwal, after committing the murder of Sunil Kumar, had buried the dead body of Sunil Kumar near Kikkar Tree in the sand dunes at a distance of about 5 killas from the Mazar, about which he has the exclusive knowledge, and, can get the same recovered. Thereafter, in pursuance to his disclosure statement, accused Lachhman Ram got recovered the dead body/skeleton along with a vest of white colour, underwear of red colour, black thread, some pieces of bangles, and, a red dupatta from the pre-disclosed place to the investigating officer concerned. The investigating officer also prepared rough site plan of place of recovery

of skeleton, as well as, of other articles, to which Exhibit P-12 is assigned.

8. 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**

9. As the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the learned committal Court, committed vide order dated 11.01.2008, the case for trial, to the Court of the learned Sessions Judge, Ferozepur.

### **TRIAL COURT PROCEEDINGS**

10. On finding a prima facie case, charge(s) under Section 302 read with Section 34, and, under Section 201 of the IPC became framed, against the accused, and, to which he pleaded not guilty, and, claimed trial.

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

12. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Ferozepur, 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 CONVICT APPELLANT**

13. (1) The learned counsel appearing for the convict-appellant has contended with vigor before this Court, that the motive for the crime event, comprised in the accused eliminating deceased Sunil Kumar, as he suspected that he would disclose their mis-deeds, rather not become cogently proved. In making the above submission, he rests it, upon the factum, that given purportedly, the deceased Sunil Kumar not returning to his homestead, as he was purportedly serving at Abohar, and, though the present appellant after purportedly leaving the homestead, of the complainant, his upon feigning the voice of Sunil Kumar, allegedly make tele-communications with the complainant from Abohar, revealing, therein that the deceased is serving at Abohar. However, he submits that the above tele-communications purportedly made by the convict to the complainant, with his feigning the voice of the deceased, is surmisal, besides is not amenable for credence, as it is un-believable that the complainant-father of the deceased, would not recognize the voice of his deceased son Sunil Kumar. Therefore, he contends that there was no occasion for the present convict to murder the deceased.
- (2) The PW-9, who conducted post-mortem on the disintegrated body of Sunil Kumar, making a statement in his cross examination, that the body of the deceased was brought in a gunny bag, by the police, before him, and, that

it was very difficult to identify the dead body, as it was in the shape of a skeleton, besides the internal organs were also missing from the skeleton. Therefore, he contends that the person of Sunil Kumar, cannot be related to the person, upon whom PW-9 made an autopsy. In other words, he submits that the instant case is a case of *corpus delicti*, as the person of one Sunil Kumar has not been yet recovered nor discovered.

(3) Though, PW-9 who conducted an autopsy on the person of Sunil Kumar, has made a statement that apart from other articles, and, clothes, he had also handed over to the police, the bones of the deceased, part of human bone for DNA examination in a plastic jar bearing mark 'GM', besides his also stating that the envelope containing seals was addressed to Incharge, CDFD, Hyderabad, containing a request letter for DNA examination therewith being made from the bone, and, blood samples of father of deceased, but the DNA report has not been placed on record. Consequently, he argues that for non adduction of the DNA Report, an inference against the prosecution is to be drawn.

(4) Though the complainant, as well as, PW-4 Nathu Khan, disclose that the present appellant disclosed to both on 17.09.2017, that he alongwith Punit Kumar Aggarwal committed the murder of Sunil Kumar, through strangulation by putting a piece of cloth around his neck, with a further disclosure therein, that the dead body was

buried by them, after having taken a spade from the Dhani (Orchard) of Kuldeep Siag, in the deserted place (sand dunes), in the area of village Kundal. Therefore, he contends that given the above pre-revelation being made to the complainant by the convict, as such, the recovery of the body of the deceased through memo comprised in Exhibit P-5, has no evidentiary tenacity, as the place of exhumation, and, thereafter the recovery of the disintegrated body of the deceased, rather was previously known to the complainant. In other words, he submits that the recovery, as made through exhibit P-5, is tainted with a stain of invention, and, concoction.

(5) The counsel for the convict-appellant has argued, that though the signed disclosure statement made by the convict, and, as becomes comprised in Exhibit P-4, makes unfoldings, that the deceased was murdered by strangulation, but PW-9, who made an autopsy, on the body of the deceased, rather during the course of his testification making an echoing, that there was cut fracture present, on the cervical vertebrae first, 2nd and 3rd, and, that the above was causable through users' of a sharp edged weapon, therefore, he contends that the disclosure statement as made by the convict, and, as becomes comprised in Exhibit P-4, also comes under a shroud of doubt, given the declarant speaking therein, that the demise of the deceased was caused by strangulation.

**SUBMISSIONS OF THE LEARNED STATE COUNSEL**

14. 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.

**REASONS FOR REJECTING THE SUBMISSIONS OF COUNSEL FOR THE CONVICT-APPELLANT.**

15. The complainant stepped into the witness box as PW-3, and, has in his examination-in-chief completely supported the version as carried in the FIR, to which Exhibit P-3 is assigned. The deposition of PW-3 is supported by the testification of PW-4.

16. Both PWs (supra) in their respectively spoken testifications, omit to make any gross improvements, or, embellishments vis-a-vis, their previously recorded statements in writings, rather both testify with the completest inter-se, and, intra-se corroboration. Resultantly utmost credence is to be assigned to their respectively made testifications.

17. They also speak with unison, about the factum, that the convict in mating himself in the homestead of PW-3, the father of the deceased Sunil Kumar, who is stated to be learning *tantricism*, and, astrology from the convict appellant. Moreover, both consistently depose that it was two or three days prior to Raksha Bandhan, in the year 2006, that when the complainant had gone to Sirsa, that the present convict along with co-accused Punit Kumar Aggarwal, besides with Sunil Kumar hence proceeded to village Taza Patti, in connection with worship, but though the present convict, and, co-accused Punit Kumar Aggarwal returned from there, but the deceased did not return to his home. Furthermore, both PWs (supra) consistently depose that on

enquiry from the convict, the latter revealed that the deceased had acquired an employment at Abohar, but yet the convict continued to stay at the house of the complainant. However, during the period of the convict continuing to stay at the home of the complainant, even after both he, and, co-accused Punit Kumar Aggarwal returning to their respective homes located at Ward No. 8 Tibbi, from village Taja Patti, yet for brief spells, he purportedly departed therefrom to Abohar, and, from there he, with his feigning the voice of the deceased made telecommunications to the complainant, to assure him, that the deceased is still alive, and, is serving at Abohar. Though counsel for the convict-appellant argues, that it is un-believable, that the complainant would not recognize the voice of his deceased son, besides obviously he argues, that even the motive, as disclosed by the declarant in his signed disclosure statement about the murder of deceased Sunil Kumar arising from his threatening to disclose their misdeeds also becomes not cogently proven.

18. However, the above echoings occurring in the consistent, testifications, as, made by PW-3, and, PW-4, as appertaining to the convict-appellant after returning to the homestead of PW-3, from village Taja Pati, where he alongwith other co-accused besides with the deceased had gone to worship, though spells conduct consistent with the innocence of the present convict, but yet thereons, no valid exculpatory plea can be vested, as, the above echoings remain unshattered rather through denials being made by PW-3, and, PW-4, to the apposite suggestions, as became meted to both, during the course of each becoming put to cross examination. If so, the further effect thereof, is that, during the above spells, the present appellant

proceeding to a place elsewhere than the homestead of the complainant, rather only, for his through his feigning the voice of the deceased hence making tele communications with the complainant but obviously only for assuring him that the deceased is serving at Abohar. The above was done only to convince the father of the deceased, that the latter is alive, besides to, in the garb of his staying in the homestead of the complainant, subsequent to his alongwith co-accused Punit Kumar Aggarwal murdering the deceased, his hence falsely assigning to it a false colour of conduct consistent with his innocence. However it was but a charade, resultantly when, as above stated, even the tele-communications, as made by the convict from a place elsewhere from the home of complainant, and, were made in a feigned voice hence similar to the voice of the deceased, cannot spur any inference, that yet the complainant could easily recognize the voice of his son, especially since, it is not difficult for any person to simulate the voice of any other person, as such, the above voice simulation also appears to have done by the complainant, to obviously give assurance, to the complainant that his deceased son is at Abohar, and, is still alive, besides to create a purported false innocuous pretext to yet continue to stay in his home.

**REASON FOR REJECTING THE ARGUMENT RELATING TO THE PLACE OF HIDING AND CONCEALING THE BODY OF THE DECEASED BEING PREVIOUSLY DISCLOSED BY THE CONVICT TO THE COMPLAINANT.**

19. The reason for rejecting the above arguments, becomes rested upon the factum, that though the convict in his signed disclosure statement comprised in Exhibit P4, had disclosed the precise location where he had hidden, and, camouflaged the body of the deceased, but the afore place of hiding, and, keeping the body of the

deceased, rather is not precisely unfolded in the declaration, as, made to the complainant by the convict. Therefore, the above vague general declaration, as, made by the convict to the complainant about the place of his hiding, and, concealing the body of the deceased, does not yet spark any inference, that qua obviously the precise place of hiding, and, keeping of the body of the deceased, by the convict was either ever previously known to the police, through the complainant, nor the recovery of the body of the deceased, as made through memo Exhibit P-5, can be construed to be false, contrived, or, an invented recovery.

**REASON FOR REJECTING THE ARGUMENT RELATING TO NON ADDUCTION INTO EVIDENCE OF DNA REPORT.**

20. The doctor who made an autopsy on the body of the deceased, though in his cross-examination has articulated that the body of the person brought to him by the police was in a disintegrated condition, and, that it was in the shape of a skeleton, wherein, the relevant internal organs were missing. Therefore, the counsel for the convict-appellant, has argued that, the person exhumed was not Sunil Kumar, but was somebody else, besides has also argued, that the charged offences is not related, to the deceased Sunil Kumar, rather it is a case of *corpus delicti*.

21. However, the above submission is rejected, as readings of the signed disclosure statement of the present appellant, to which Exhibit P-4, is assigned, and, which becomes extracted hereinafter, rather vividly unfolds, about the precise location of the hiding, and, concealing of the body of the deceased by him, and, by co-accused Punit Kumar Aggarwal, since absconding. The above place is secretive, and, but could be known only to the convict. He could not cause its

exhumation, from the precise location of its being buried, unless he was the sole repository of knowledge qua its becoming buried, or, hidden by him. Therefore, an apt tenacious evidentiary worth is to be assigned to Exhibit P-4, as it becomes signed by the convict-appellant, besides when his not being able to either ably deny, nor, has been able to prove any apt denial of his signatures, as become carried thereons. Further, in pursuance to drawings of Exhibit P-4, through recovery memo carried in Exhibit P-5, the body of the deceased was exhumed, and, thereafter, it was taken into possession by the investigating officer concerned.

“ ..... that in the last year, two days prior to the festival of Raksha Bandhan, in the night I and Puneet Kumar jointly enticed away Sunil Kumar s/o Sant Ram Caste Ghumiar r/o ward No. 8 Tibbi District Hanumangarh and brought him for paying obeisance at MAJAR PANJ PEER in the area of village Kundal. At a short distance of five killa from the MAJAR, they had murdered Sunil Kumar by strangulation, by putting a red dupatta around his neck, near Kikker tree in the Rohi and after removing his clothes, except underwear and vest on the dead body of Sunil Kumar, buried the dead body of Sunil Kumar in the same position by putting red cloth around his neck, after digging a pit near Kikker tree. Only I and Puneet Kumar have exclusive knowledge about this fact and at this time, I can get recover the dead body of Sunil Kumar by pointing out.....”

22. Moreover, since the proceedings relating to the exhumation of the body of the deceased from the place of its being buried, occurred in the presence of Executive Magistrate-cum-Tehsildar, Abohar, who has proven the recitals, as, carried therein, as, appertain to the above factum, resultantly the recovery memo comprised in Exhibit P-5, does require accentuated probative sanctity, as, it has been drawn in pursuance to the provenly signed disclosure statement of the convict, to which Exhibit P-4 is assigned. In consequence, when the site of recovery of the body of deceased Sunil Kumar, as above stated was known only to the convict, given it being

buried in a remote, desolate place. Resultantly with the relevant declaration made in the apposite proven signed disclosure statement to which Exhibit P-4, is assigned, rather openly conveying that the declarant would ensure the causings' of recovery of none other than the dead body of one Sunil Kumar, as such, the body recovered through Exhibit P-5, relates to the body of the son of the complainant. In sequel, any withholding of the report of the DNA Expert working at Hyderabad becomes rendered completely inconsequential.

**REASON FOR REJECTING THE ARGUMENTS OF THE LEARNED COUNSEL FOR THE APPELLANT THAT THE FRACTURES PRESENT ON THE BODY OF THE DECEASED BEING PRONOUNCED BY PW-9 TO BE CAUSABLE BY USER OF SHARP EDGED WEAPONS WHEREAS THE DECLARANT IN DISCLOSURE STATEMENT EXHIBIT P-4 CONFESSING HIS COMMITTING THE MURDER OF SUNIL KUMAR BY STRANGULATION, LEADING TO AN INFERENCE THAT EXHIBIT P-5, IS FALSIFIED.**

23. The above made argument is also completely devoid of any merit, as the presence of fractures on the body of the deceased, upon, its becoming put to autopsy by PW-9, and, with PW-9 making a testification, that they were causable through users', of a sharp edged weapon, but it would not yet bely the signed disclosure statement comprised in Exhibit P-4, nor, would bely the consequent therewith recovery, as made through recovery memo Exhibit P-5. Even if in Exhibit P-4, the declarant convict appellant, had confessed qua his murdering the deceased, through his strangulating him, and, even if yet the above injuries became pronounced by PW-9, in the post mortem report to which Exhibit P-17 is assigned, but yet the predominant reason for this Court yet assigning tenacious evidentiary value to Exhibit P-4, and, to the consequent therewith recovery, as, made through recovery memo Exhibit P-5, becomes comprised in, as above

stated, rather the body of the deceased becoming confessed, by the present appellant to be hidden, or, concealed in a remote, desolate place, whose location was obviously known only to him. Further, since it became exhumed in the presence of an Executive Magistrate, resultantly the exhumation of the body of the deceased, at the instance of the present appellant, could not have happened, from the remote, desolate place of its becoming buried, unless the convict had the sole knowledge about the relevant remote, desolate place. Since the factum of his being the sole repository of knowledge about its being buried, is but evident, therefore, reiteratedly even the effect, if any of the above echoing made by PW-9, in his examination-in-chief, rather not belying the confession, as made by the convict in Exhibit P-4, about the murder of deceased becoming caused through strangulation. Therefore, to the considered mind of this Court, the above testification becomes completely inconsequential, besides becomes completely underwhelmed by the above validly drawn memo(s).

### **CONCLUSION**

24. In aftermath, no conclusion other than the one, as became drawn earlier by the learned convicting Court, rather is to be also drawn by this Court.

25. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it.

### **FINAL ORDER BY THIS COURT**

26. Consequently, the appeal is dismissed. The impugned verdict of conviction, and, the consequent therewith sentence(s) (supra), as become imposed upon the convict-appellant, by the learned convicting Court, are affirmed and maintained.

27. 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

07.09.2022

kavneet singh

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