

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-624-DB-2013 (O&M)
Reserved on: 10.11.2022
Date of decision: 15.11.2022

SHYAM LAL ...Appellant
Versus
STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rahul Vats, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 19.02.2013, upon Sessions Case RBT No.003 of 2013/2011, by the learned Additional Sessions Judge, Faridabad, wherethrough in respect of charges drawn for offences punishable under Section 302 and under Section 201 of the IPC, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order drawn on 20.02.2013, the learned trial Judge concerned, imposed, upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Name of convict	Offence u/s	Period of sentence (RI)	Fine imposed (In Rs.)	Period of sentence in default of payment of fine (SI)
Shyam Lal	302 IPC	Life Imprisonment	50,000/-	One year
	201 IPC	Three years	20,000/-	Three months

2. All the above sentence(s) of imprisonment were directed to run concurrently, but the period spent in prison by the convict during investigation

or trial was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.PA is assigned. It is recorded therein, that on 5.3.2011, a V. T. was received from Control Room that one dead body was lying near bridge of Chandawali. On this information, ASI Ashwani Kumar (PW9) alongwith other police officials reached Agra Canal where Shokat Ali (PW8) got recorded his statement Ex.PF to the effect that he is resident of House No.D-161, Gali No.11, Ward No.32, Tirkha Colony, Police Station City Ballabgarh and he is an agriculturist. They are two brothers and one sister. They have taken the land of Agra canal for cultivation and they have sown wheat in it. Alongwith it, there are trees owned by the Government. They have set up a hut on the Western side of Ganda Nala of Agra canal so that the crops could be watched properly. They have also kept a cot in the hut to have rest. They have also kept certain odd articles like sickle (Darati) etc. in the hut. When he reached his hut today at 12.30 p.m., to watch his fields, then he found Sheru (leg of cot) and Paant stained with blood. He found that some drops of blood were on the ground also. This made him suspect some criminal activity there. He saw certain signs of dragging from his hut leading towards drain of water. When he followed this track, he found a dead body with his head missing at a distance of approximately one killa towards Southern side of the fields of wheat. The deceased was

wearing yellow underwear and a black pant which seem to be drawn below the knees. The dead body was also wearing a high-neck T-shirt and under it, there was another T-shirt of red colour. The age of the deceased seem to be 30/35 years. Some unknown persons had slit the neck of this unidentified person because of some enmity and had tried to destroy the evidence by hiding the head.

INVESTIGATION

5. On the basis of aforesaid complaint Ex.PF, FIR was registered. Investigation was conducted by SI/SHO Ram Kumar. Photographer was called who clicked the photographs of the spot. Rough as well as scaled site plan of the place of occurrence were also prepared. Inquest proceedings were conducted. The dead body was sent to B. K. Hospital, Faridabad for postmortem. Rope of the cot, leg of cot (Sheru), blood stained earth, blood stained sickle and green coloured plastic pot (Tasla) were taken into possession and converted into parcels with the seal of DS and were sent to FSL Madhuban for necessary examination. On 7.3.2011, complainant Shokat Ali got recorded his supplementary statement to the effect that Ranjit has been murdered by his tenant Shyam Lal and his friends Kundan and Vijay. On the same day, accused Shyam Lal was arrested who made disclosure statement admitting his involvement alongwith his friends Kundan and Vijay in the commission of murder. Accused Shyam Lal also got recovered the head of deceased Ranjeet. Accused Vijay and Kundan could not be arrested so far. Statements of witnesses were recorded.

COMMITTAL PROCEEDINGS

6. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 13.07.2011, the learned Judicial

Magistrate Ist Class, Faridabad, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 10 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel appearing for the convict-appellant has vigorously argued before this Court, that since it is a case based upon circumstantial evidence, thus, the reliance as made by the learned trial Judge concerned, upon the disclosure statement of the convict, besides upon the consequent therewith recoveries, is, rather a misplaced reliance. To fortify the above submission, he submits that the drawing of the disclosure statement besides the drawings of the recovery memos are tainted besides are concocted, and, manufactured rather through a stratagem deployed by the investigating officer concerned.

9. Moreover, he further submits that since the FSL concerned, has made an inconclusive opinion, qua the blood group of the blood stains' occurring on the apposite items, as became sent thereto, for the rendition of an opinion. Therefore, he argues that the items concerned, as became recovered through the relevant memos hence cannot be concluded to become related to the blood group of the concerned. Thus, he argues that even on the above score, the incriminatory disclosure statement besides the incriminatory recovery memos concerned, also loose their evidentiary vigor. He further submits that the

impugned judgment, is ridden, with grave vices of gross mis-appreciation and non-appreciation of evidence germane to the charge. Therefore, he contends that the impugned judgment be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. The learned State counsel has argued that the impugned verdict of conviction, and, consequent therewith sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

DISCLOSURE STATEMENT OF THE CONVICT AND CONSEQUENT THEREWITH RECOVERIES

11. Since FIR to which Ex.PA is assigned makes revelations, only about the headless body of the deceased concerned, being located by the informant. Thus, unless the head of the deceased was also validly recovered, at the instance of the convict, thereupon the mere recovery of the headless body of the deceased by the informant, may not lead this Court to draw an unflinching conclusion, that rather the charge drawn against the convict, becoming amenable for being sustained.

12. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict being put to police remand, he made a signed disclosure statement, to which Ex.PJ is assigned. The contents of Ex.PJ are ad verbatim extracted hereinafter.

“Disclosure statement of convict Shyam Lal

In the presence of the following witnesses, aforesaid accused Shyam Lal while in police custody without any fear, pressure or greediness made a disclosure statement that I Vijay son of Shiv Sharma, Caste Khati, R/o

Amari, PS Dharana, Distt. Munger, Bihar at present tenant Bhatia Colony, Ballabgarh and Kundan son of Sukhdev Chaudhary, Caste Paasi, Village Khanjarpur, P.S. Khanjarpur, Distt. Bhagelpur, Bihar, we all three are good friends. On 4.3.2011 Vijay told me and Kundan that he had an old enmity with Ranjit whom he wanted to murder but he had not come into my hold. Now I had developed some friendship with him, but still I nursed a grudge against him. On 4.3.2011 at about 8.30 p.m., all of three met at Tigaon road in the evening. Vijay brought Ranjit there from some where. Thereafter all of the four consumed liquor on the road in front of banquet hall at Tigaon road. Thereafter we went to the hut owned by the owner Shokat Ali. We consumed more liquor there. We deliberately made Ranjeet to consume liquor in excess. Ranjit lay down on the cot under intoxication. I caught hold the feet of Ranjeet who was still lying on the cot, Vijay caught hold of both the hands of Ranjeet and Kundan throttled him to death to destroy the evidence. After some time I and Vijay caught hold of Ranjeet and Kundan brought a green plastic tub from the hut and placed it on the left side of the head of Ranjeet so that blood might drop in the tub and might not spill on the ground. Kundan after bringing a sickle from the same hut beheaded Ranjeet and put the head into the plastic bag which was lying nearby and dragged the beheaded body in the fields of wheat which was one killa away from the hut and threw the sickle and plastic tub in Ganda Nala, after that we reached sector 2 B, Ballabgarh Green belt with the head of the deceased and dug a pit there and buried the head into it and left the polythene bag there. I can get the place of occurrence demarcated and could get recover the sickle, plastic bag, dead body and upper portion of neck from those places. The memo of disclosure statement was written and signatures of witnesses and accused were got obtained on it.

*Sd/- in Hindi
Accused Shyam Lal*

*Sd/- in Hindi
Shokat Ali son of Fazru Khan*

*Sd/- in English
ASI Ashwani No. 437*

*Sd/-
Ram Kumar
SI/SHO
PS Sdr. Ballabgarh
Dt. 7/3/11."*

13. Ex.PJ carries the signatures of the convict. Moreover, therein occur candid echoings qua the accused-convict confessing his guilt in beheading deceased Ranjit with a sickle. Moreover, thereins also occur speakings about the

convict hiding and camouflaging, the beheaded body of deceased Ranjit in the wheat fields located about 1 killa away from the hut besides it also contains echoings about the convict throwing the sickle and plastic tub in the ganda nala. Furthermore, there are speakings therein about the ability of the convict to ensure recovery of all the above, from their respective place(s) of hiding(s) and keeping(s), given the said place(s) being exclusively within the knowledge of the convict.

14. The confession of guilt as made in Ex.PJ would be a bald and simpliciter confession, and, would be hit by Section 25 of the Indian Evidence Act, if consequent therewith recoveries were not made, but if consequent therewith recoveries were validly made, thereupon the confession of guilt as made in Ex.PJ by the convict would become both admissible besides relevant.

15. Since in pursuance to the drawings of Ex.PJ, the accused through recovery memo to which Ex.PL, is assigned ensured the effectuation of recovery of the chopped head of the deceased, from the apposite pit wherein it became buried by the convict. The relevant site, of the apposite recovery is depicted in Ex.PQ. Thus, the confession of guilt, as made by the convict before the police officer during the latter taking his police remand, does not become a bald simpliciter statement nor the same is hit by the statutory bar encapsulated in Section 25 of the Indian Evidence Act. Contrarily, the consequent therewith recovery of the decapitated head of the deceased Ranjit, as became made through Ex.PL, does also make the confession of guilt, as encapsulated in the disclosure statement of the convict, carried in Ex.PJ, to carry an incriminatory overtone of immense evidentiary vigor.

REASON FOR FORMING THE ABOVE CONCLUSION

16. The reason for forming the above conclusion arises from:

(a) The convict neither contesting the validity of occurrence of his signatures on disclosure statement Ex.PJ nor his proving the said denial.

(b) The inability of the convict to bely the contents of the apposite recovery memo(s) through his adducing cogent evidence, suggestive that the recover(ies) as became effected, through the relevant memo(s), rather was a planted or engineered recovery, through a stratagem deployed by the investigating officer concerned, inasmuch as, despite the relevant places, being prior to the makings therefrom of apposite recover(ies), being also known to the investigating officer concerned, besides the latter evidently keeping there, the incriminatory items, his yet taking to purportedly draw the memos concerned, whereupon obviously no evidentiary solemnity was rather assignable thereto.

17. Preponderantly in the wake of absence of the above evidence, it can but be concluded, that not only the drawings of Ex.PJ is valid, but also the drawings of the apposite recovery memos is valid. Thus, utmost evidentiary sanctity is to be assigned to Ex.PJ, and, also to the consequent therewith recover(ies) as became effected through the appositely drawn recovery memo(s).

18. In nutshell, the cogently proven Ex.PJ and consequent therewith recover(ies) as made through Ex.PL, do constrain this Court, to formidably conclude, that therethroughs the charge drawn against the convict becoming fully established.

19. During the course of investigations being made into the FIR, the accused, as revealed by Ex.PM, contents whereof are extracted hereinafter identified the crime site, besides also identified sickle through user whereof he

had slit the neck of the deceased. Moreover, therein also echoings occur about the place where he had thrown the plastic pot. The above extracted contents of Ex.PM have not been proved to be false, as no suggestions became meted to the investigating officer concerned, suggestive that Ex.PM suffers from any vice of it being concocted, and, doctored by the investigating officer concerned. Therefore, utmost evidentiary vigor is to be assigned to Ex.PM. Thus, the above leads to a further inference that therethrough firm incriminatory evidence has emerged against the convict-appellant.

“In the presence of the following witnesses, in the aforesaid case aforesaid accused Shyam Lal while in police custody led to the police by going ahead demarcated the hut which was built on the Ganda Nala, on which the murder of deceased was done and again the dead body was thrown and he has demarcated the fields of wheat, sickle from which the neck of the deceased was slit and was thrown in the Ganda Nala and plastic pot was also thrown, which is correct as per site plan at the place of occurrence. Memo of demarcation was got prepared and signatures of witnesses were got obtained on the memo.”

MEDICAL EVIDENCE (POST MORTEM REPORT)

20. The post mortem report as became drawn by the doctor in pursuance to his conducting an autopsy on the body of deceased, is, carried in Ex.PE/1. The autopsy on the body of the deceased was conducted by a team of doctors, but only one of them Dr. Mahesh Bhati stepped into the witness box, as PW-7, and, who then proved the above exhibit, through his during the course of his examination-in-chief, tendering his affidavit Ex.PE. The observations as made in Ex.PE/1 are ad verbatim extracted hereinafter.

“Injuries:-

The body is present amputated into two parts, the irregular wound margins are lying in alignment with free aends of head and

rest of the body. Head is decapitated in the upper neck region from the rest of the body, cutting all the underlying structures. Clotted blood and blood stains are present.

INTERNAL EXAMINATION:

a) Scalp, Vertebrae, Skull – as described, Membranes, Brain, Spinal Cord – as described.

b) Walls, ribs, cartilages, pleurae – Pale, NAD.

Larynx & trachea, Right lung & Left lung – pale.

c) Pericardium, Heart & large vessels – Right side of the heart contains dark coloured blood and left side was empty.

d) Abdomen – Abdominal wall – NAD, Peritoneum – Pale; mouth, pharynx and oesophagus – pale and as described; Stomach – Pale & contains gastric juices and gases, Small intestines – Pale, contains chyme and gases and large intestines – Pale, and contains faecal matter and gasses. Liver, Spleen, kidneys – Pale, Bladder – Pale, contains about 10cc of urine. Organs of generation – external – NAD, internal – Pale.”

21. Moreover the cause of demise of the deceased has been opined in Ex.PE/2, to arise from shock and haemorrhage, as a result of ante mortem injuries, as became noticed on the neck of the deceased. The said ante mortem injuries have been opined to cause death in the ordinary course of nature.

22. The effect of the above extracted echoings as occur in the post mortem report to which Ex.PE/1 is assigned, is that, therethrough the prosecution has been able to prove the incriminatory role of the convict, to, with user of sickle decapitate the head of deceased Ranjit. Thus, corroboration from Ex.PE, is lent to the disclosure statement Ex.PJ besides therethrough corroboration, is also lent, to the consequent therewith recover(ies) as became effected through the appositely drawn recovery memo(s).

FSL REPORT

23. The report of the FSL is embodied in Ex.PK. The Senior Science Officer, who made an examination of the sealed parcels, as became sent to him, for examination, inclusive of Ex.-3 one daranti (approx .36cm) having rusty metallic blade, of wooden handle, besides of Ex.-4 one green plastic tub/Tasla stained with dark stains, moreover of Ex.-1 comprising of lumps of earth and loose earth (approx .10 gm) described as blood stained earth, did though, make an opinion about human blood, being found on the above incriminatory items, but yet he has not been able to vividly pronounce, that the human blood as found thereons, also appertaining to the blood group of the deceased or to the blood group of the accused. Moreover, a perusal of the result of the examination as made of the blood as occurred on daranti Ex.-3, also does not clearly reveal, that the blood stains existing thereons rather matching, with the blood group of the accused or with blood of the deceased, especially when in respect thereof, the Senior Science Officer has pronounced, that given the disintegration of the blood stains, as carried thereons, hence his being disabled to make any firm apposite opinion.

24. Therefore, the learned counsel for the convict-appellant, has argued that, the effect of the above inconclusivity of opinion, by the Serologist concerned, about the blood group of the blood stains occurring on the relevant incriminatory items, does forestall this Court, from assigning any evidentiary vigor to either the disclosure statement or to the consequent thereto recover(ies).

25. However, this Court rejects the above argument. The reason is but simple inasmuch as, the investigating officer concerned, during the course of his holding investigations, had rather failed to collect the FTM cards either of the accused or of the deceased. If he had done so, and, had sent them along with the

apposite incriminatory items concerned, to the Serologist concerned, thereupon the above referred inconclusive opinion would not have ensued. The sequel of the above lack of collections, inasmuch as of the respective FTM cards of the accused, and, of the deceased, is that, the defence cannot draw any succor from the above inconclusivity of opinion, as made by the Serologist concerned, about the blood stains, as carried on the relevant incriminatory items belong, neither belonging to the blood group of the deceased nor to the blood group of the accused, which otherwise he could have made, in case the above collections rather had been made by the investigating officer concerned, besides all had also become sent to him. Moreover only then but if the said opinion was favourably made qua the accused, thereupon alone the argument (supra) of the learned counsel for the convict-appellant could succeed.

SUMMARIZATION OF PRINCIPLES

- a) The signed disclosure statement, and, consequent therewith recoveries, do hold immense evidentiary vigor, unless the convict is able to ably deny his signatures thereons, and, is also able to prove the said denial.
- b) The apposite recover(ies) are to hold evidentiary vigor, and, force, unless the defence adduces cogent evidence suggestive, that the said recoveries are planted by the investigating officer concerned, inasmuch as, his provenly prior to the making of the apposite recover(ies), rather keeping the recovered incriminatory items at the sites/places wherefrom they became recovered, subsequently at the instance of the convict, to the Investigating Officer concerned.

c) The inconclusivity of opinion by the Serologist concerned, about the blood group of the blood stains, as found on the incriminatory items, would not give any leverage to the defence, unless evidence surges forthwith suggestive that, along with the blood stained incriminatory items, the investigating officer concerned, had also sent the FTM cards respectively of the accused, and, of the deceased. Furthermore, when thereons an opinion favourable to the accused becomes recorded.

FINAL ORDER

26. 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 any 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. If the accused is on bail, thereupon the sentence(s), as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants qua him.

27. Before parting, this Court is constrained to frown upon the inability of the investigating officer concerned, to despite the convict in his disclosure statement, to which Ex.PJ is assigned, naming co-accused Vijay and Kundan, as co-participants in the relevant penal occurrence, yet the investigating officer concerned, for a prolonged duration of 15 years rather failing to arrest them. Consequently, the Superintendent of the Police District concerned, is directed to forthwith ensure the expeditious making of arrest of the above co-accused, and, thereafter cause their production before the learned Court concerned. Moreover,

the learned trial Judge concerned, is also directed to then forthwith draw proceedings under Section 299 of Cr.P.C., against the co-accused concerned, and, thereafter shall with utmost despatch conclude the trial as would become entered into by him against them.

28. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

29. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

15.11.2022

Ithlesh

(KULDEEP TIWARI)
JUDGE

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