

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

CRA-D-671-DB of 2010 (O&M)

Reserved on: 13.09.2022

Date of Decision : 21. 10. 2022

Budhram @ Budhu and others

...Appellants

VERSUS

State of Haryana

...Respondent

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

Present : Mr. Kapil Aggarwal, Amicus Curiae
for the appellants.

Mr. Anmol Malik, DAG, Haryana.

N.S.SHEKHAWAT, J

The present appeal is directed against the judgment of conviction dated 28.11.2009 and order of sentence dated 01.12.2009 passed by the Court of learned Additional Sessions Judge, Fast Track Court, Gurgaon (now Gurugram), whereby, the appellants had been held guilty under Section 396 IPC read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- (each) and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years.

Shorn of unnecessary detail, the brief facts of the case are that on 01.11.2006, a telephonic message was received by the police that a dead body is lying near IFFCO Chowk in green belt in

Gurugram. On getting the information ASI Gulam Mohd. alongwith other police officials reached at the spot. He summoned photographer at the spot and had taken snaps of the dead body. Mukesh son of Lal Chand met him at the spot and he got his statement recorded. After this, he sent a *ruka* to the police station through Constable Mukesh Kumar for registration of the DDR, on which DDR Ex.PR was registered. It was informed by Mukesh son of Lal Chand that he is having a tea stall in the area of IFFCO Chowk and at about 09.30 a.m., a rickshaw puller came to him and informed him that a dead body of a young person is lying in the green belt near IFFCO Chowk, NH-8, Gurugram. He reached at the spot, where dead body of a young person was lying and there were marks of injuries on his nose and blood was oozing from his mouth and nose. It appeared that the said person had consumed some poisonous substance which resulted in his death. It was also informed that the deceased was wearing a white T-shirt, light blue jeans, black and white *baniyan* (vest), blue underwear and sky blue socks. On this DDR was registered in the police station. The inquest proceedings were also conducted under Section 174 Cr.P.C. and the dead body was kept in the mortuary. On 03.11.2006, Safi Ullah and Aftab Alam @ Guddu came to the mortuary and identified the dead body as that of Mahfooj Alam son of Sami Ullah. The postmortem was got conducted and the dead body was handed over to the legal heirs. On 03.11.2006 itself,

ASI Gulam Mohd took handkerchief and medicine into possession vide memo Ex.PF at the spot.

On 07.11.2006, a person, namely, Ramjan Ansari, co-villager of the deceased came and told that the deceased was having one mobile bearing No. 9871745189, wrist watch, clothes etc., and the same are missing and not found with the dead body. He expressed the suspicion that Mahfooj Alam had been murdered by some one. On this a writing Ex.PR was sent to the police station for registration of the case. ASI Gulam Mohd. reached at the spot on 07.11.2006 and prepared rough site plan. Even, the FIR Ex.PR/1 in the instant case was also registered on 07.11.2006. He recorded the statements of various witnesses under Section 161 Cr.P.C. Even special reports were sent to the learned Illaqa Magistrate and the senior officers of the police by hand through Constable Sudhir Kumar.

On 09.11.2006, a telephonic message from Sanjiv Balhara, Sub-Inspector, Special Staff, Sector 10 Gurugram was received to the effect that accused Parmod, Rohtash, Mukesh and Ravi had suffered disclosure statements regarding involvement in the present case and the disclosure statements of the said accused were taken into possession and the statements of SI Sanjiv Kumar, ASI Tej Ram and constable Manoj were recorded under Section 161 Cr.P.C..

On 13.11.2006, he came to know about the disclosure statement of Budh Ram @ Budhu from Police Station Manesar which

was suffered by him in FIR No. 371/2006, exhibited as Ex.PKK. The police remand was sought and recoveries were made in pursuance of various disclosure statements suffered by the accused. These accused made the respective disclosure statements to the Investigating Officer about the manner, in which, they used to give lift to the passengers and they used to kill them and used to throw their dead bodies after looting their belongings. The disclosure statements were also suffered by accused in the instant case and in pursuance of the said disclosure statements, the belongings of the deceased were recovered from the said five accused/appellants. Even, the opinion of the doctor was taken and as per him, there were two injuries on his person and the deceased had died due to asphyxia caused by strangulation. Ultimately, after the investigation was completed, the final report under Section 173 Cr.P.C. was prepared by the police and was presented in the competent Court.

During the course of trial, the prosecution examined 36 witnesses. On closure of the prosecution evidence, the statements of all the accused under Section 313 Cr.P.C. were recorded and all the accused had denied their involvement in the commission of the crime and pleaded their innocence. All of them stated that they did not make any disclosure statement nor any recovery was got effected by them. They also denied that no such occurrence was committed by them.

After hearing both the sides, vide the impugned judgment and order, the appellants were convicted and sentenced as

mentioned above. Assailing the findings recorded by the trial Court, the present appellants are before us and pray for setting aside the impugned judgment and order.

Learned counsel for the appellants has vehemently argued that there is no admissible evidence against the present appellants and the appellants have been falsely implicated on the basis of disclosure statements, alleged to have been made by them in the police custody. Even, there was no independent witness to the recoveries shown from them and the recoveries have been planted by the police in collusion with the complainant party. Still further, certain recoveries have been shown by the police from the present appellants, however, such commodities are easily available in the market and can be planted on any person. Still further, there was no evidence to show that the said recovered articles belong to the deceased and the chain of circumstances was not complete so as to prove the guilt of the present appellants.

The submissions made by the learned counsel for the appellants have been opposed by the learned State counsel by referring to the various testimonies of the prosecution witnesses. The learned State counsel submitted that from the evidence led by the prosecution, it was apparent that the accused had conspired and joined hands to commit the murder of Mahfooj Alam. In fact, they used to give lift to the passengers/strangers in their vehicles and innocent passengers/strangers were given the impression that some

passengers were already sitting in the vehicle and in reality, the persons occupying the vehicles were not passengers, rather they were the culprits themselves. As soon as the passenger was made to sit in the vehicle, he was strangled to death after putting a belt around his neck and then his belongings were looted by the accused, after committing the murder. Even this was the *modus operandi* of these appellants and they had killed several persons in the same manner in District Gurugram and surrounding areas. Even, their involvement was established in several offences of similar nature and they did not deserve to be acquitted by this Court.

We have heard learned counsel for the parties and with their able assistance, we have gone through the evidence led by the prosecution.

Before advertng to the submissions made by learned counsel for the parties, we would discuss the testimonies of certain material witnesses of the prosecution in brief. On finding the dead body of an unknown person on 01.11.2006, a DDR Ex.PR was registered on the basis of statement of Mukesh Kumar son of Lal Chand. The investigation was started and on 03.11.2006, the dead body was identified by the relatives of the deceased. The postmortem was got conducted from a board of doctors and the dead body was handed over to the relatives after the postmortem. The police also recorded the statements of Safi Ullah, father of deceased and Aftab Alam @ Guddu under Section 174 Cr.P.C. On 07.11.2006, the

statement of Ramjan Ansari, co-villager of the deceased was also recorded and the investigation had formally commenced. On 09.11.2006, Sajniv, Sub Inspector, Special Staff Sector 10, Gururam informed the police regarding the involvement of Parmod, Rohtash, Mukesh and Ravi, all appellants regarding their disclosure statements and involvement in the instant case. Sanjiv Kumar, SI, Special Staff was examined as PW16. He clearly stated that on 06.11.2006 he was posted as In-charge, Special Staff Sector 10, Gurugram and was the Investigating Officer in case FIR No. 1133/2006 registered under Sections 302/201 IPC, Police Station DLF, Gurugram. He interrogated Parmod @ Bhuru appellant No.4, who suffered his disclosure statement for 26 occurrences including the occurrence in this case. Still further, he also interrogated Mukesh @ Ghasar appellant No. 2, who suffered his disclosure statement Ex.PU to the similar effect. Even disclosure statement of Rohtash @ Langur @ Bablu appellant No. 5 Ex.PT and disclosure statement of Ravi Kumar appellant No. 3 Ex.PV were recorded and all of them deposed on the similar lines and admitted their involvement in various occurrences including the present case.

The prosecution also examined PW7 Sombir No. 989, in whose presence Parmod @ Bhuru, appellant No. 4, in pursuance of his disclosure statement got recovered one purse, one ring of brass, one photo and one watch from his house and the same were taken into possession vide memo Ex.PE. The case properties were converted

into a parcel and sealed with the seal of 'DM'. Still further the prosecution examined PW8 HC Jagdish Chand, who was joined in the investigation at the time when the dead body was taken into possession by the police and the initial investigation was conducted. On 14.11.2006, he was again joined in the investigation and Budhram @ Budhu appellant No. 1 was interrogated, who suffered his disclosure statement Ex.PH admitting his involvement in the crime. In pursuance of his disclosure statement, he admitted his involvement in the crime and he narrated the manner in which the crime was committed. On 15.11.2006, Ravi Kumar appellant No. 3 was also interrogated and he also suffered disclosure statement Ex.PJ on similar lines. In pursuance of his disclosure statement, Ravi Kumar, appellant No. 3 got recovered a bag of the deceased and the same was taken into possession by the police vide memo Ex.PJ/1.

The prosecution also examined PW11 Umed Singh, in whose presence Rohtash @ Langur @ Bablu appellant No. 5 suffered a disclosure statement Ex.PM. Even Rohtash @ Langur @ Bablu appellant No. 5 also got recovered one towel Ex.P10 and belt Ex.P11, which were taken into possession vide recovery memo Ex.PM/1. The belt was also used by the accused in the commission of the crime and Mahfooj Alam was strangulated with the help of the said belt.

The prosecution also examined PW12 Constable Mukesh Kumar. He was joined in the investigation on 14.11.2006 by the police and Budhram @ Budhu, appellant No. 1 was interrogated

by the police in his presence, who suffered his disclosure statement Ex.PH. He deposed that the accused Budh Ram @ Budhu, appellant No. 1, present in the Court got recovered mobile phone of the deceased from his house in pursuance of his disclosure statement and the same was taken into possession vide memo Ex.PO. Even on 15.11.2006 itself, Parmod @ Bhuru appellant No. 4 was also interrogated in his presence who suffered disclosure statement Ex.PR. In pursuance of the said disclosure statement, Parmod @ Bhuru appellant No. 4 got recovered one purse, one ring and wrist watch of the deceased.

The prosecution examined PW17 HC Jagdish Chander, in whose presence Mukesh @ Ghasar appellant No. 2 was interrogated who suffered his disclosure statement Ex.PY. The prosecution examined PW22 ASI Ram Tirath, in whose presence Budhram @ Budhu appellant No. 1 suffered his disclosure statement and admitted his involvement in 17 similar occurrences. Finally, the prosecution examined PW32 SI/SHO Gulam Mohd. the Investigating Officer in the present case. After discovery of the dead body, he got DDR Ex.PR registered and conducted the initial investigation. He conducted the inquest proceedings and after identification of the dead body by the relatives, the postmortem was got conducted from a board of doctors. He recorded the statements of various witnesses, who were acquainted with the facts of the instant case. He also moved an application Ex.PB/4 to Medical Officer, General Hospital,

Gurugram on 10.11.2006 regarding seeking the opinion about the cause of death of the deceased and on this Dr. M. Parkash tendered his opinion about the cause of death. He also witnessed the various disclosure statements suffered by all the appellants in police custody and is also a witness to the recovery of various incriminating articles from the exclusive possession of all the appellants. Even all the accused in their disclosure statements had stated that on 31.10.2006, they gave lift to a person from Rajiv Chowk in their jeep bearing registration No. HR-61-1154 from Manesar. When they reached near Hero Honda Chowk they found traffic jam and all the accused returned back towards Delhi and when they were passing over the bridge of Rajiv Chowk, they strangulated the deceased and had thrown his dead body near IFFCO Chowk, green belt and he alongwith his co-accused had looted the belongings of the deceased, after committing his murder. The said articles belonged to the deceased were recovered from all the appellants in pursuance to their respective disclosure statements made by them in police custody.

Apart from that, the prosecution also examined PW4 Balraj Singh, Naib Tehsildar, Gurugram. He joined the investigation and opened the sealed parcels of various articles recovered from the accused and mixed up with other articles and, thereafter, he asked Safi Ullah, father of the deceased to identify the articles of his son. His father identified the articles belonged to his son, i.e., Mahfooj Alam (deceased). After that he had put the articles back in the same

parcel and sealed with the seal of 'JSR'. He prepared his report Ex.PC and Sami Ullah also had put his thumb impression on his report. Even the articles/belongings of the deceased were identified by the father of the deceased as the belongings of his son.

Learned counsel appearing for the appellants had argued that the appellants had been falsely implicated in the instant case only on the basis of disclosure statements made by them in police custody and the recoveries of various articles have been planted on them by the police. He further contended that the recovery of various articles have been shown by the police, which are easily available in the market and have been planted by the police, just to ensure their false implication in the instant case. We do not agree with the submissions made by the learned counsel for the appellants. In fact, the prosecution examined PW16 Inspector Sanjiv Kumar, who was posted as In-charge, Special Staff Sector 10, Gurugram and asked the Investigating Officer of a different FIR No. 1133 of 2006 registered under Sections 302 and 201 IPC and Police Station DLF Gurugram. He interrogated Parmod @ Bhuru, Budhram @ Budhu, Rohtash @ Langur @ Bablu and Mukesh @ Ghasar all four appellants in the said case and the said four appellants admitted their involvement in almost 26 occurrences including the occurrence in the instant case.

Similarly, Budhram @ Budhu appellant No. 1 was arrested by PW22 ASI Ram Tirath in a case FIR No. 371 dated 18.10.2006 under Sections 302/201 IPC Police Station Manesar and

Budhram @ Budhu appellant No. 1 was interrogated in the said case, who suffered his disclosure statement Ex.PKK admitting his involvement in 17 occurrences including the occurrence of this case also.

The custody of all the five appellants was obtained by PW32 Gulam Mohd. SI/SHO in the instant case and they were interrogated in the presence of the witnesses by the appellants in the instant case as well. All the five appellants had not only demarcated the place of occurrence, but also got recovered various belongings of the deceased. Even, the memos of recoveries were also prepared by the police, which were duly witnessed by the witnesses. The law is well settled that the testimonies of even official witnesses cannot be brushed aside only on the ground that they are police witnesses and the appellants/accused have failed to show that the said witnesses were either inimical towards the appellants or had any other reason to falsely involve them in a criminal case.

Still further, even the belongings of the deceased, which were recovered from the appellants were mixed up with other articles, after opening their seals. Thereafter, in the presence of Balraj Singh Naib Tehsildar PW4, Sami Ullah father of the deceased was called and he identified the recovered articles as the articles belonged to his son. He duly identified the articles recovered from all the appellants in pursuance of their respective disclosure statements, which conclusively proves the involvement of the appellants in the

commission of the crime. Consequently, it cannot be said that the recoveries were either planted or the police officials had any reason to falsely involve the appellants in the instant case.

Learned counsel for the appellants had vehemently argued that the case is based on circumstantial evidence and the chain of circumstances was not complete in the instant case, so as to prove the involvement of the appellants in the commission of the crime. Still further, there was no evidence of criminal conspiracy and there was nothing on record to prove that all the appellants had joined hands to do any illegal act and the appellants have been falsely involved in the instant case. In fact, we have considered the submissions made by the learned counsel for the appellants in the light of the evidence led by the prosecution and reject the same. We are aware of the fact that direct independent evidence of criminal conspiracy generally not available and its existence is a matter of inference. Even such inferences are normally deduced from the acts of the parties in pursuance of a purpose connecting the conspirators. There was enough evidence that there was an agreement between the present appellants to commit the offence and in pursuance of the said criminal conspiracy, they strangled Mahfooj Alam, deceased and had thrown his dead body in the green belt near IFFCO Chowk Gurugram. Still further, the present appellants also admitted their involvement in several similar offences as well.

In view of the observations made above, we find no merit in the instant appeal and upheld and affirm the impugned judgment of conviction dated 28.11.2009 and order of sentence dated 01.12.2009 passed by the learned Additional Sessions Judge, Gurugram.

Resultantly, the instant appeal stands dismissed.

All the pending miscellaneous applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with in accordance with law after the expiry of the period of limitation.

The accused shall be taken into custody forthwith, if on bail in the instant case, to serve the remaining sentence.

The trial Court record be transmitted back.

We record our appreciation for Mr. Kapil Aggarwal, Amicus Curiae, who had rendered able assistance to this Court.

(SURESHWAR THAKUR)
JUDGE

21.10. 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No