

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

CRA-D-1179-2022 (O&M)
Reserved on: 12.09.2023
Date of decision: 19.09.2023

RAKESH @ VAIDH

...Appellant

Versus

STATE OF HARYANA

...Respondent

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

Present: Dr. Anand Kumar Bishnoi, Advocate
for the appellant.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 26.09.2022, upon Sessions Case No.SC/491/2017, presented on 07.04.2017, registered on 10.04.2017, by the learned Additional Sessions Judge, Rohtak, wherethrough, in respect of charges drawn for offences punishable under Sections 302/201/34 of IPC, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of 01.10.2022, 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.

Under Section	Sentence
U/s. 302 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.15,000/- (Rupees fifteen thousands only) and in default whereof, to further undergo imprisonment for a period of six months.
U/s. 201 IPC	To undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- (Rupees five thousands only) and in default whereof, to further undergo imprisonment for a period of two months.

2. Both the substantive sentences were ordered to run concurrently. However, the sentences in default of payment of fine were ordered to run conjointly. 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 is that, the complainant Jagat Singh (PW-1) moved an application/complaint (Ex.P1) before the police alleging therein, that he is resident of village Bhagwatipur, District Rohtak. He is working as Head Constable in RPF, Shakur Basti, Delhi and he had come on leave. On 4.9.2012, at about 8.30 p.m., his elder brother Rajender Singh went to their Gher with his food from his house as usual. On 5.9.2012, at about 5.00 a.m., in the morning, his Bhabi Sushila wife of Rajender went to their Gher for milking the buffalo. She found that main gate of the Gher and room were locked from outside. His Bhabi told him in this regard. He went to the Gher and found that Gher and room were locked from outside. He saw from the window of the room

and found that food of his brother was there as it is on the cot and container of milk was lying on the Takhat (wooden bed). He took another key of the lock from his house and opened the door and found that food and milk were lying as it is. He and his family searched for his brother but he was not found. He prayed for search of his brother. Thereafter, the complainant Jagat Singh moved another application Ex.P2 before the police alleging there that on 05.09.2012, he got reported the missing report of his brother Rajender alias Raju son of Prem Singh vide Rapat No.37, however on 08.09.2012, he came to know that his brother Rajender had been murdered in the Gher by Rakesh son of Rajmal, Punjab alias Pappal son of Ranbir, wife of Rakesh, Sandeep son of Karambir in conspiracy with each other and after the murder of his brother they either burnt or hide the dead body in order to destroy the evidence. He prayed that action might be taken against the accused.

COMMITTAL PROCEEDINGS

5. Since the afore offence was exclusively triable by the Court of Session, thus vide committal order dated 28.03.2017 the learned Sub Divisional Judicial Magistrate concerned, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

6. The prosecution examined as many as 25 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

7. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent

thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto 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.

CIRCUMSTANTIAL EVIDENCE BASED CASE

9. The prime incriminatory link in the erected chain of circumstantial evidence, thus is the motive ascribed to the present appellant to murder deceased Rajender alias Raju by PW-1 to PW-3. Since the prosecution case becomes rested, upon a chain of incriminatory circumstances, therefore, all the links in the incriminatory chain of circumstances, rather are required to be unflinchingly proven by the prosecution.

10. Before proceeding to determine the adequacy, and, potency of the proof, thus becoming adduced by the prosecution vis-a-vis the primary link in the chain of incriminatory circumstances, inasmuch as, qua the convict nursing a motive to murder the deceased, it is deemed imperative to initially analyse, the statement of the complainant-informant, who stepped into the witness box as PW-1.

ANALYSIS OF THE DEPOSITION OF PW-1

11. The complainant-informant stepped into the witness box as PW-1 who in his examination-in-chief, proved his lodging a missing report Ex.P-1, in respect of his deceased brother Rajender alias Raju. He has spoken about his

identifying the dead body of his deceased brother Rajender alias Raju. Moreover, he has also spoken in his examination-in-chief that, on 07.09.2012 his cousin Sombir apprising him, that he has last seen his deceased brother, with convict Rakesh alias Vaidh son of Rajmal.

12. Since PW-1 apart from making the above speakings in his examination-in-chief, rather has not rendered any eye-witness account in respect of the crime event. Therefore, his testification excepting for his speaking, about his cousin Sombir apprising him, that on 07.09.2012, he had last seen his deceased brother in the company of the present appellant, thus does not enclose therein any incriminatory link vis-a-vis the crime event.

ANALYSIS OF THE DEPOSITION OF PW-2

13. PW-2 in his examination-in-chief, has spoken about the nursing of a motive, by the present appellant, to commit the murder of deceased Rajender alias Raju. He voiced in his examination-in-chief that on 04.09.2012, when his cousin Rajender alias Raju, was found missing from his gher, thus at that time he was out of the village. However, he speaks that prior to the demise of his cousin, the latter had told him, that Rakesh alias Vaidh had borrowed a sum of Rs. 14,000/- from him, wherefrom he had returned to him a sum of Rs.9,000/-, and, that a sum of Rs.5,000/- rather remained unpaid to him by the present appellant. He further voiced in his examination-in-chief, that he revealed the above fact, on 22.09.2012, to the police in the Baithak of Jagat Singh. Therefore, he states that owing to the above unreturned sum of money, which was repeatedly asked by the deceased, to be returned to him, by the appellant, that the latter nursed a motive, and, thereby to satiate the motive (supra), he committed the crime event. However, for the reasons to be assigned hereinafter, the above made speaking by PW-2, in his examination-in-chief, does not inspire the confidence of this Court.

14. The primary reason for making the above inference, ensues from the factum, that though he has spoken in his examination-in-chief, that the said fact did become unfolded to the police, on 22.09.2012 at the Baithak of Jagat Singh, PW-1, but yet the said fact remained unspoken by PW-1 in his testification. Therefore, but naturally when the said speakings remained uncorroborated by PW-1, thereby the statement (*surpa*), is robbed of its efficacy.

15. The further reason for not assigning credence to the above speakings, as occur in the examination-in-chief of PW-2, arise from his failing, to declare therein, the exact date and time of the said money transaction occurring *inter-se* deceased Rajender alias Raju, and, the present appellant.

16. Cumulatively thus, the omission of PW-2 to speak with specificity about the date and time of the money transaction occurring between the appellant, and, the deceased, rather leads to an inference, that he has falsely ascribed a motive to the present appellant, as purportedly generating from some amount remaining unpaid by the present appellant to the deceased, thereby the latter nursing a motive to commit the crime event.

17. Therefore, the prime incriminatory link (*supra*), in the chain of incriminatory circumstances as erected by the prosecution thus loses its potency.

ANALYSIS OF THE DEPOSITION OF PW-3, WHO TESTIFIES ABOUT THE LAST SEEING TOGETHER OF THE ACCUSED, AND, THE DECEASED

18. PW-3 in his examination-in-chief has spoken that, on 04.09.2012, at about 10:00/10:30 p.m., when he had come to his village, from his fields, then he heard the voice of his cousin deceased Rajender alias Raju, in the house of Rakesh alias Vaidh, and, which led him to reach the gate of the newly constructed house of Rakesh alias Vaidh. He speaks that then he heard, that his cousin Rajender alias Raju, was demanding the remaining/unpaid money from

Rakesh @ Vaidh, thereupon the latter replied that he would pay the amount in the near future. Therefore, he speaks that he asked his cousin Rajender alias Raju to accompany him, but the appellant told him, that Rajender alias Raju would come after some time. Subsequently, he returned to his house and slept, and, thereafter he become apprised that the deceased-cousin Rajender alias Raju rather was missing from the night of 04.09.2012/05.09.2012. He has thereby corroborated his previously made statement in writing to the police. However, on a reading of his cross-examination it emerges, that the speakings in his examination-in-chief, that on the relevant day he had overheard the deceased, to demand money from the appellant, rather becoming not scribed in his previously made statement in writing to the police. Therefore, when the above fact became spoken by PW-3 only in his examination-in-chief, and, not in his previously made statement in writing before the police. Resultantly, the said speaking by PW-3 in his examination-in-chief, despite his earlier not speaking the said fact in his previously made statement in writing to the police, rather makes it to be a gross embellishment or improvement, over his previously made statement in writing. The natural sequel thereof, is that, thereby no credence is to be assigned to the above made statement, as occurs in the examination-in-chief of PW-3.

19. The further speaking made by PW-3 in his examination-in-chief, that he had last seen the appellant, and, the deceased together, inasmuch as, his purportedly last seeing both together but in proximity to his deceased cousin rather disappearing from his homestead, but naturally also looses its evidentiary efficacy.

20. The consequence thereof, is that, even the theory of last seen, as propagated by the witness (supra), is bereft of any vigor, thereby the above incriminatory link in the chain of circumstances, as, erected by the prosecution also becomes weakened besides looses its potency.

DISCLOSURE STATEMENT OF THE APPELLANT AND CONSEQUENT THEREWITH RECOVERIES

21. 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 appellant, Rakesh @ Vaidh being put to police remand, he made a signed disclosure statement, to which Ex.P-34 is assigned. The contents of the Ex.P-34 are ad verbatim extracted hereinafter.

“Disclosure statement of accused Rakesh @ Vaidht

In presence of following witnesses accused Rakesh @ Vaidh s/o Rajmal, caste Jat R/o Bhagwatipur, in police custody without any fear, greed or coercion disclosed that on dt. 4/5-09-2012 in the evening time about 8/9:00 pm I was drinking liquor while sitting in my gher. At that time Rajender @ Raju s/o Prem Singh, caste Jat R/o Bhagwatipur also came to me for drinking liquor. I was having a transaction of Rs. 5000/- with Raju who had insulted me. I was having grudge in my mind that today I will kill him by drinking liquor to him. I have told about this to my wife Mohini and Mohini also told this to my friend Pappal that Rajender was to be finished. After doing the work. I will tell you. As according to our plan, I had murdered/ killed Rajender @ Raju by drinking him liquor at the gher of my varanda (open area), by inflicting injuries with bricks into his head and by wrapping his corpse, with the help of my friend Punjab @ Pappal, and placing it in my Indica car No. HR-70-7223 and pour the corpse with palli into the Sirsa branch Narwana, to hide (conceal) the corpse and the brick with which I had inflicted injuries to Raju, killed him, I had also thrown that into the canal. I have talked many times from my telephone to my wife Mohini about this and told that I had done the work of Rajender (killed Rajender) and disposed him. During the time of killing Rajender @ Raju and while picking his corpse, I had been stained with blood. I had thrown the shirt, into the canal by picking it out and after coming to house I had kept concealed my trouser by picking it out, into an iron box lying in the chobara (upper room) of my gher. I can got demarcate that place where I had killed Raju and where I had thrown the corpse into the canal and I can also got recovered that trouser which I had worn at the time of murder. You had been told the truth. Disclosure statement of accused has been recorded on which accused and witnesses have appended their signatures.

Accused Rakesh

Sd/ (In Hindi)

Witnesses:

1. Ram Niwas s/o Thambu Ram

caste-Jat R/o Mokhra Khas

Sd/ (In English)

Ct. Sukhbir Singh No.1841

PS Lakhan Majra

Sd/- (In English)

R/ESI

PS L/Majra

Dt. 23-11-2016”

22. A reading of the above extracted signed disclosure statement, as made by appellant Rakesh alias Vaidh, reveals, that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of his trouser Ex.P-33, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof, through a recovery memo Ex.P-33, he caused the recovery of his trouser. The appellant has not been able to either ably deny his signatures as occur on Ex.P-34, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented.

23. Though, the disclosure statement, and, the consequent thereto recoveries, may hold some vigor given the appellant not ably denying his signatures, as occur thereon nor his proving the said denial. Nonetheless, the efficacy of the said disclosure statement pales into insignificance, as the present appellant was declared a proclaimed offender, whereas, the other co-accused along with him, faced trial in respect of the appeal FIR, which ultimately resulted in a verdict of acquittal being made vis-a-vis the appearing co-accused concerned. The verdict of acquittal, as made vis-a-vis the appearing co-accused was made, on 18.05.2017. The trial in respect of the appeal FIR qua the present

appeal became entered into by the learned trial Judge concerned, but only after his making appearance, on 21.11.2016 before the learned trial Judge concerned.

24. Since all the disclosure statement(s) but alike the one(s) which are made by the present appellant, thus were also made by the appearing accused, before the investigating officer concerned during the course of the investigations being made vis-a-vis the appeal FIR. Therefore, it appears that since the appearing co-accused, before the learned trial Judge concerned, had thus unfolded or revealed to the investigating officer concerned, the relevant sites wherefrom, the relevant recoveries inclusive of the site, from where the corpse of the deceased, thus became recovered. Resultantly, when the investigating officer concerned, was already in the know of the relevant places of hidings, and, keepings of all the relevant incriminatory material. Therefore, when rather for assigning evidentiary solemnity to the recoveries, as are made by the accused, thus of all the incriminatory materials concerned, to the investigating officer concerned, hence, in pursuance to signed disclosure statement made by the co-accused, rather require(s), that the said place(s) of keepings, and, hidings of the relevant incriminatory materials, thus being exclusively within the knowledge of the accused concerned. However, when the said sites of recoveries were neither secluded nor inaccessible sites, therefore, nor within the exclusive knowledge of the appellant. Therefore, the lack of exclusivity of the knowledge of the appellant qua purported secluded places of keepings, of incriminatory materials, thus brings home a firm conclusion, that the disclosure statements, as well as the consequent thereto recoveries, as became made, thus are lacking in any evidentiary vigor. Contrarily, the said disclosure statements, and, the consequent thereto recoveries, are to be construed to be an ill sequel of ill deployments of stratagems, and, machinations at the instance of the investigating officer concerned. Consequently, but obviously, the said incriminatory links in

the chain of circumstances as erected by the prosecution do also become extremely frail besides, loose their evidentiary worth.

MEDICAL EVIDENCE (POST MORTEM REPORT)

25. The autopsy upon the body of deceased Rajender alias Raju, was conducted on 08.09.2012 by PW-20 along with Dr. Aashish Tyagi. PW-20 has proven *qua* his, authoring Ex.P38, as relates to the autopsy as made upon the body of deceased.

26. Moreover, he has proven that the cause of death of deceased Rajender alias Raju, was owing to the injuries described in the PMR and their complications. All the injuries were declared to be ante mortem and being caused by hard blunt object/impact force. The relevant ante mortem injuries as noticed by PW-20, on the body of deceased are extracted hereinafter.

“1. A lacerated wound of size 2.5 x 1 cm was present over the right side of forehead just above the middle of right eyebrow. On dissection, of scalp, underlying scalp was focally ecchymosed over the frontal region. On further dissection of skull, sutural diathesis i.e. sutural fracture of midpoint of coronal and sagittal suture (Bregma) with infiltration of blood in bony trabeculae, brain matter was converted into hemorrhagic greyish pasty.

2. A lacerated wound of size 1 x 0.5 cm was present over the right side of lower lip.

3. A lacerated wound of size 2 x 1.5 cm was present over the middle of chin.

4. A reddish abrasion of seize 3.5 x 2 cm was present over the dorsum of left hand.

5. A diffuse reddish contusion was present over the midline of anterior chest wall over an area of size 12 x 9 cm and more so over the left side. On dissection of thorax, underlying intercostal tissues were ecchymosed (left side) On dissection of thorax, underlying intercostal tissues were ecchymosed (left side) and body of sternum was found fractured in middle with infiltration of blood in body trabeculae. On further dissection, underlying pericardium was

contused and 2nd to 6th ribs of left side were found to be fractured and mid clavicular line anteriorly and 5th and 6th (left) ribs were fractured in anterior axillary line with infiltration of blood in bony trabeculae. The anterior aspect of upper lobe of left lung was found to be lacerated and fluid. Reddish blood was present in left hemithorax.

6. A reddish contusion of size 3 x 1 cm was present over the lateral aspect of middle one third of right thigh. On dissection, underlying tissues were ecchymosed.

7. A reddish abrasion of size 3.2 x 1.7 cm was present over the anterior aspect of left knee.

8. A reddish abrasion of size 2 x 1.5 cm was present over the dorsum of left feet.”

27. Since for all reasons (supra), this Court had discarded the evidentiary vigor of all purported incriminatory links in the chain of circumstances, as erected by the prosecution. Therefore, the enunciations made in the PMR, and, also the cause of demise of deceased but naturally do also not carry any evidentiary worth.

FSL REPORT

28. Sealed samples parcels became sent to the FSL concerned, respectively vide R.C. No.Nil dated Nil through Serology Division. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted conclusions.

“Laboratory Examination:

Chemical tests and techniques were employed to detect common gaseous and volatile poisons, metallic poisons, inorganic anions, plant poison, pesticides and drugs in exhibits-1a to 1d. Based upon the examination carried out in the laboratory, the rests are given as under:-

“RESULTS OF EXAMINATION

1. No common poison could be detected in exhibits-1a, 1b, 1c and 1d.”

29. The said results are also inconsequential in forming a conclusion that thereby the charges drawn against the present convict, becoming efficaciously proven. Conspicuously when the cause of demise of the deceased is not on account of his becoming poisoned.

FINAL ORDER

30. The result of the above discussion, is that, this Court finds merit in the appeal, and, is constrained to allow it. Consequently, the appeal is allowed. The impugned judgment and order convicting, and, sentencing the appellant, and, as recorded by the learned trial Judge concerned, are quashed, and, set aside. The appellant is acquitted of the charges framed against him. The fine amount, if any, deposited by him, be, in accordance with law, forthwith refunded to him. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The case property, if any, if not required, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. The appellant, if in custody, and, if not required in any other case, be forthwith set at liberty.

31. Records be sent down forthwith.

32. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

19.09.2023

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(KULDEEP TIWARI)
JUDGE