

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-1456-DB-2013 (O&M)
Reserved on: 11.9.2024
Date of Decision: 17.09.2024

Raj Kumar and others
.....Appellants

Versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. S.S. Rana, Advocate and
Mr. Mrigank Sharma, Advocate
for the appellants.

Mr. Sartaj Singh Gill, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 26.07.2013, upon Sessions Case No.RT-19 of 21.11.2011, by the learned Additional Sessions Judge, SAS Nagar, Mohali, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 302, 411 and 460 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts for offences punishable under Sections 302, 380 and 460 of the IPC. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

ACCUSED RAJ KUMAR	
U/S 460 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further

	undergo RI for three months.
U/S 302 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 380 of the IPC	To undergo Rigorous imprisonment for four years and to pay a fine of Rs.5000/-. In default of payment of file to further undergo RI for three months.
ACCUSED BITTU	
U/S 460 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 302 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 380 of the IPC	To undergo Rigorous imprisonment for four years and to pay a fine of Rs.5000/-. In default of payment of file to further undergo RI for three months.
ACCUSED SHAMBHU	
U/S 460 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 302 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 380 of the IPC	To undergo Rigorous imprisonment for four years and to pay a fine of Rs.5000/-. In default of payment of file to further undergo RI for three months.
ACCUSED KALA ALIAS BHUNDI	
U/S 460 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 302 of the IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, to further undergo RI for three months.
U/S 380 of the IPC	To undergo Rigorous imprisonment for four years and to pay a fine of Rs.5000/-. In default of payment of file to further undergo RI for three months.

2. All the above imposed substantive sentences of imprisonment, were ordered to run concurrently. The period spent in prison by the convicts, thus during the investigation or trial of the case, 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 accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst criminal appeal bearing No.CRA-D-1456-DB-2013.

Factual Background and investigation

4. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PW11/B is assigned. The narrations carried in Ex.PW11/B are, that Anita Rani widow of Sudesh Kumar Gupta and her son Sunny Gupta (both deceased) lived together in their house situated at Mundi Kharar, where Sunny Gupta also carried on the business of scrap dealer in a portion of the house. Sunny's father's sister's husband Sushil Kumar PW15 and his son Rakesh Kumar PW7 also lived there and had their shop nearby. In the morning of 1.7.2010, at about 8.30 A.M, one Javru, Sunny Gupta's servant came to the house of Sushil Kumar and informed him that Sunny had not been opening the door of his house despite his persistent knocking. Sushil Kumar and his son Rakesh Kumar impenitent Javru to Sunny Gupta's house. When the outer door of house was not opened on their knocking, Rakesh Kumar effected his entry into the house through the house of a neighbourer. He and his father found that both Anita Rani and Sunny were lying dead on a bed and appeared to have been strangulated. It was found that things in the room lay scattered and locks of the almirah had also been broken open. The entire house had been ran-sacked. Leaving his father behind, Rakesh Kumar proceeded towards Police station Kharar. On the

SHO, P.S City Kharar near Bansawala "Chungi". Rakesh Kumar narrated as to what had transpired to the SHO, who took down his statement Ex.PW7/A and forwarded the same to the police station. A formal FIR Ex.PW11/B came to be recorded. The story as mentioned in the FIR did not mention the name of any culprit and it was stated that the crime was committed by some unknown persons. Meanwhile, Anita Rani's daughter Sapna Bansal PW3 and her husband Gagan Bansal PW2 had also arrived at the house from Dera Bassi. They identified the dead bodies when Inspector Tarlochan Singh reached there after recording the FIR. The dead bodies were then sent to Civil Hospital Kharar for postmortem examination.

5. Although the investigation had ensued on 1.7.2010, it remained stuck up without any progress for full one year. The police remained clueless as to the culprits. Then on 29.7.2011, ASI Pawan Kumar PW4, on being entrusted with investigation, the same day proceeded to Kiratpur Sahib accompanied by ASI Tarlochan Singh PW5 among other police officials in order to arrest accused Bittu. Accused Bittu was arrested from his shunty in "Bangala Basti". Bittu is stated to have told the police party (vide statement of ASI Tarlochan Singh PW5) that his relatives accused Kala and latter's friends Raj Kumar and Shambhu accused had been habitually committing thefts and dacoities. On 1.8.2011, Bittu was taken out of police lock up and interrogated by ASI Pawan Kumar. He disclosed that he had committed the aforesaid two murders on 1.7.2010 with intent to commit dacoity and Kala accused had strangulated Sunny to death with a Parna and thereafter they also strangulated Anita Kumari to death when she refused to give the keys of almirah. It also came in evidence that accused then took away Rs.6 lacs and some gold and silver ornaments from the house, which were distributed

6. On 1.8.2011, accused Bittu also suffered disclosure statement Ex.PW4/C, confessing that he had kept concealed two bowls of silver and two pairs of anklets in a trunk lying in his house at Kiratpur Sahib. Pursuant to the statement, he led the police party to his house and from there he produced from the stated place two silver bowls and two pairs of Anklets vide memo Ex.PW4/D attested by ASI Tarlochan Singh and HC Angrej Singh. The said articles Ex.MO1 to MO4 were sealed by ASI Pawan Kumar in a parcel and seal thereafter handed over to ASI Tarlochan Singh. The sealed parcel was deposited with MHC, P.S Kharar the same day.

7. On 29.7.2011, ASI Harminder Singh and HC Rohtash Singh PW8 proceeded to Bangala Basti at Morinda, from where accused Shambhu and Raj Kumar were arrested vide memo Ex.PW8/C and Ex.PW8/D.

8. On 1.8.2011 ASI Gian Singh interrogated accused Kala, while he was in police custody. Accused Kala alias Bhundi suffered a disclosure statement Ex.PW8/E that he had kept concealed one gold chain and one silver tumbler which had come to his share after the crime, wrapped in a polythene paper in his house. He then led the police party to his house and from where got recovered one gold chain with a locket bearing impression SK Ex.MO9 and one silver tumbler on which name Anita was engraved Ex.MO8. ASI Gian Singh sealed these articles in a parcel with his seal GS and the same were taken into possession vide memo Ex.PW8/F, which was signed by HC Rohtash Singh and HC Hardev Singh.

9. On 25.7.2011, one Hardeep Singh son of Mohinder Singh resident of village Desu Majra met a police party headed by ASI Harminder Singh in the vicinity of Bus stand village Desu Majra and disclosed that on the preceding day (24.7.2011) he was present at patrol pump of Mundi

in a drunken state and they were saying that they had committed Anita Rani and Sunny's murder at Mundi Kharar and stolen gold ornaments and cash from their house, out of which major share was taken by Bittu and Kala. Hardeep Singh also disclosed that he already knew Raj Kumar and Shambhu, who were junk dealers. ASI Harminder Singh recorded said statement of Hardeep Singh vide Ex.PW12/A. On the same day, he raided house of Kala accused and learn that Kala was lodged in Ambala Jain. On 29.7.2011 he arrested Raj Kumar and Shambhu accused from Bangala Basti Morinda. On 31.7.2011, Raj Kumar, Shambhu, Bittu and Kala accused were taken out of the lock up and interrogated by ASI Harminder Singh. On that day i.e. 31.7.2011, Sushil Kumar PW15 came to CIA staff and disclosed to ASI Harminder Singh that a few days back when he happened to be present at Patrol Pump of Mundi Kharar he had heard Raj Kumar and Shambhu, who were in a drunken state stating that they have committed the aforesaid two murders at Mundi Kharar and stolen gold ornaments and cash from there and the major share of booty was taken by Bittu and Kala accused. Sushil Kumar's statement was recorded.

10. On 1.8.2011, accused Raj Kumar and Shambhu were interrogated by ASI Harminder Singh. Raj Kumar then disclosed vide statement Ex.PW12/B that he and other accused had committed the aforesaid murders and stolen ornaments and cash, out of which one gold ring and a silver bracelet came to his share and he kept the same concealed in a bag of clothes in his shunty. Shambhu accused then disclosed vide statement Ex.PW12/D that out of the stolen ornaments, one gold chain with a silver locket and one silver tumbler came to his share and he kept the same in a wooden box in his shunty. Pursuant to the above statements which were

accused led police party to his shunty and got recovered one gold ring weighing 4.870 grams MO10 on which name Sunny was engraved and one silver bracelet weighing 6.280 grams MO11. The same were sealed in a plastic box with seal of ASI vide recovery memo Ex.PW12/E. Shambhu accused then led police party to his shunty and got recovered one gold chain with a locket weighing 12.060 grams Ex.MO5 and one silver tumbler weighing 62 grams Ex.MO6 on which name Anita was written. The said chain and tumbler were sealed into a parcel vide memo Ex.PW12/F. The sealed parcel were later deposited with MHC of P.S City Kharar.

11. Sushil Kumar PW15 who is Sunita Rani's husband's sister's husband claimed to have heard Shambhu and Raj Kumar accused talking to each other at Patrol Pump Mundi Kharar stating that they had committed the murder of a lady and her son at Mundi Kharar conjointly with other accused and also stolen cash and gold ornaments from their house.

12. Sapna Bansal PW3 daughter of Anita Rani identified the recovered articles from the accused i.e two pair of anklets, two silver bowls (MO1 to MO4); silver tumbler on which name Anita was engraved MO5; gold chain along with locket with words SK MO6; silver tumbler MO8, gold chain and locket MO9; gold ring MO10, silver bracelet MO11 as the ones which belonged to her mother Anita Rani and brother Sunny Gupta and had been stolen from their house pursuant to their murders.

Committal Proceedings

13. Since the offence punishable under Section 302 of the IPC, was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 07.11.2011, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

14. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw a charge against accused, for the commission of offences punishable under Sections 302, 460 and 411 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

15. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, they did not lead any witness in their defence evidence.

Submissions of the learned counsel for the appellants-convicts

16. The learned counsel for the aggrieved convicts-appellants has argued before this Court, that 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

17. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court, thus in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convicts-appellants, be dismissed.

Circumstantial evidence based case*Signature disclosure statements of the accused and pursuant thereto recoveries*

18. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signature disclosure statements, to which Exs.PW4/C, PW8/E, PW12/B and PW12/D become respectively assigned.

19. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signature disclosure statements (supra), convicts, confessed their guilt of committing robbery and murder of two persons'. The further speaking therein is qua theirs keeping, and, concealing the robbed ornaments. Moreover, the said signature disclosure statements do also make speakings about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the robbed ornaments, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

20. Significantly, since the appellants have not been able to either ably deny their signatures as occur on Exs.PW4/D, PW8/F, PW12/E and PW12/H nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Therefore, all the memos are concluded to be holding the utmost evidentiary tenacity.

21. Significantly also since post the making of the said signature disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, each of them through separate recovery memos, thus respectively carried Exs.PW4/D, PW8/F, PW12/H, PW12/E

and PW12/F, thus caused the recoveries of the robbed ornaments to the investigating officer concerned. Consequently, when the said made recoveries are also not suggested by any cogent evidence to be planted recoveries. Resultantly, the effect thereof, is that the valid recoveries were made vis-a-vis the ornaments robbed by the convicts, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation(s) of valid recoveries of the ornaments robbed, thus by each of the convicts to the investigating officer concerned, but naturally effectively clinches the charges drawn against the accused.

22. Fortified vigor to the above becomes derived from the hereinafter extracted contents of the examination-in-chief, as became rendered by the owner of the robbed articles.

“I am married with Gagan Bansal. My father had already expired before my marriage. My brother Sunny and my mother Anita Rani had been living in village Mundi Kharar. My brother was doing the work of scrap at Mundi Kharar in his house. I had made a telephone call to my mother and brother on 30.6.2010 at about 11:00 p.m. On 1.7.2010, I received telephone call from my relative Rakesh who informed me that murder of my mother Anita and brother Sunny was committed by strangulation. Rakesh Kumar is residing near my parental house. I along with my husband went to Mundi Kharar in my parental house where dead bodies of my mother and brother were lying. The locks of almirah were broken and ornaments and cash were missing from the almirah. On 1.8.2011, I went to CIA Staff Kharar where the police shown us certain ornaments like gold chain along with locket on which words Anita were written, one silver glass on which words Anita was scribed, one gold ring and one bracelets and two pairs of anklets and two katori of silver, one gold chain along with locket and on the locket words SK were scribed and one more glass on which words Anita were scribed which were identified by me and the same belong to my

mother and brother. The abovesaid articles were taken into possession vide separate memo by the police which was attested by me. I have seen the said memo and identify my signatures thereon. The same is Ex. PW3/A. My statement was recorded. Before two days prior to the occurrence, I had gone to my parental house and gold and silver ornaments were shown to me by mother. At this stage four sealed parcels along with sample seal bearing impressions "HS" have been produced before the Court. The said parcels have been ordered to be opened. Out of one two pairs of anklets and two small silver bowls have come out which are Ex.MO-1 to MO-4. Another parcel has also been opened from which one small silver glass on which Anita has been scribed has come out along with gold chain with locket on which words SK are written along with a slip wherein the weight of the glass and golden chain is written. The glass is Ex. MO-5 and gold chain along with locket containing words SK is Ex. MO-6. The slip is Ex.MO-7. Another parcel has been opened from which one small glass of silver and one gold chain with locket on which words Anita are scribed have come out which are Ex. MO-8 and Ex. MO-9. Another parcel has also been opened and one gold ring and silver bracelet have come out which are Ex. MO-10 and Ex. MO-11."

23. A reading of the above extracted deposition, as comprised in the examination-in-chief of the owner of the robbed articles, thus forthrightly portray, that thereby she was able to identify the produced in Court, the robbed items, whose recoveries became effected through recovery memos (supra). Since the anchor of the deposition of PW-3, as comprised in her examination-in-chief, does cogently establish the *inter se* connectivity *inter se* the recovery memos and the ownership over the robbed ornaments of deceased-Anita. Resultantly, thereby the recoveries, as made through the recovery memos (supra), are deemed to be made vis-a-vis those articles which became robbed from the house of the owner concerned. In sequel, the charge drawn against the accused becomes invincibly established.

engraved on the robbed items, therebys also the learned counsel for the appellants rather cannot argue that the recoveries as became made in pursuance to the disclosure statements thus were fictitious or fabricated recoveries.

25. Moreover, since the valid drawing of the recovery memos (supra), were proven by PW-4 during the course of his rendering his examination-in-chief. Resultantly, when during the course of an exacting cross-examination, becoming conducted upon PW-4, the hereinafter extracted echoings, as occur in his examination-in-chief rather remained unshattered vis-a-vis their apposite evidentiary efficacy. Consequently, thereby the drawing(s) of the recovery memos (supra), became efficaciously proven wherebys also the able testification (supra), as rendered by the owner of the robbed articles, thus acquires an able corroboration from the recovery memos (supra).

“On 29.7.2011, I was posted at CIA Staff SAS Nagar Mohali camp at Kharar. On that day, I along with ASI Tarlochan Singh, C. Parminder Singh, C. Roop Singh were going to Kiratpur Sahib in order to arrest the accused Bittu in the instant case and I arrested accused Bittu son of Sewa Singh resident of Bangala Basti near Railway Lines Kiratpur Sahib and prepared memo of arrest and information as per Ex.PW4/A and also prepared his personal search Ex.PW4/B which was thumb marked by the accused and witnessed by ASI Tailochan Singh and C. Parminder Singh. I identify the accused present in the Court.

On 1.8.2011, accused Bittu made confessional statement before me which was reduced into writing and the same is Ex.PW4/C which was witnessed by ASI Tarlochan Singh and H.C. Angrej Singh. As per confession made by accused Bittu, the recovery of two bowls of silver i.e. Ex.P1 and Ex.P2, two pairs of anklets Ex.P3 and Ex.P4 were recovered vide memo Ex.PW4/D which was witnessed by ASI Tarlochan Singh and H.C. Angrej Singh. After the recovery of abovesaid articles, the said articles were taken sealed by me with the

seal bearing impressions "PK" and after use the seal was handed over to ASI Tarlochan Singh. On the same day I also prepared rough site plan of place of recovery. I have seen the said memo which bears my signatures and the same is Ex.PW4/E. During the investigation of this case I recorded the statements of the abovesaid witnesses. I have seen the case property today in the Court. At this stage, the learned Addl. P.P. submits that he may be permitted to get opened the case property. Request accepted. Case property is ordered to be got opened). The said case property was recovered from the accused by me. However the said case property is at present not bearing my seal. I have seen the case property Ex.MO1 to Ex.MO-4 which was recovered from the accused and I identify the same."

MEDICAL EVIDENCE (POST MORTEM REPORT)

26. An autopsy upon the body of deceased Anita Rani was conducted on 02.07.2010 by PW-1 along with Dr. Adarshpal Kaur, and Dr. Rajesh. PW-1 has proven *qua* his, authoring Ex.PC, as relates to the autopsy as made upon the body of deceased.

27. This witness has also proven *qua* the cause of death of deceased, was asphyxia owing to strangulation which was ante mortem in nature and sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries, as noticed by PW-1, on the body of deceased are extracted hereinafter.

"1. A reddish brown upper ligature mark 3 cm below chin on anterior aspect of neck extending laterally on right side. A lower ligature mark 1.5 cm below upper one, reddish brown in colour extending laterally on bot sides. Laryngeal carlilages fractures on dissection, blood oozed out from subcutaneous tissue layer."

28. The autopsy upon the body of deceased Sunny Gupta was also conducted on 02.07.2010 by PW-1 along with Dr. Adarshpal Kaur, and Dr. Rajesh. PW-1 has proven *qua* his, authoring Ex.PF, as relates to the autopsy as made upon the body of deceased Sunny Gupta.

29. This witness has also proven qua the cause of death of deceased, was asphyxia owing to strangulation which was ante mortem in nature and sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries, as noticed by PW-1, on the body of deceased are extracted hereinafter.

“1. A reddish black depressed irregular ligature mark, situated 2.5 cm wide on the left side. It is situated up to lateral aspect of neck and on right side up to right half of posterior part of neck. A second ligature mark, 2 cm below the first one, reddish black, irregular and depressed, 2.3 cm wide situated all around neck. Laryngeal cartilages fractured. On dissection blood ooze present in the subcutaneous tissue.

2. An abrasion 1 cm x .5 cm on glans penis anteriorly left hemiscortum contused.

3. A contusion 5 x 5 cm on posterior aspect of right leg, adjoining knee crease.

4. Multiple small contusion on right side of the lower abdomen, 8 cm medial to anterior superior iliac spine.”

30. Since a reading of the above made signed disclosure statement(s) thus leading to pursuant thereto recoveries becoming made, when earmarks the factum qua therein the accused confessing their guilt in the commission of the charged offence, thereby the above cause of death, as highlighted in Ex.PC and in PF, thus becomes corroborated from the respectively made disclosure statements and by the consequent thereto prepared recovery memos (supra).

31. As but a natural corollary thereto, the charged offences do thereby become proven to the hilt.

FINAL ORDER

32. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively

recorded, and, imposed, upon the appellants-convicts by the learned trial

Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the apposite appeal, and, the same is dismissed. If the appellants are on bail, thereupon they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

33. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

34. Miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 17th 2024
Ithlesh

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