

**CRA-D-732-DB-2011 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-732-DB-2011 (O&M)
Date of Decision: 24.09.2024****NAVEEN****... Appellant****Versus****STATE OF HARYANA****...Respondent****CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Mr. Priyavrat Parashar, Advocate
for the appellant.

Mr. A.S. Chaudhary, Addl. A.G., Haryana.

Mr. Rajender Kumar, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 15/16.07.2011 passed by the Addl. Sessions Judge, Rohtak.

2. The FIR was registered on 01.09.2008, the judgment of conviction and order of sentence passed by the Addl. Session Judge, Rohtak is dated 15/16/.07.2011, the appeal was filed on 06.08.2011 and the matter is being taken up for hearing now after 16 years of the registration of the FIR.

3. The brief facts are that on 1.9.2008, Rajender Singh ASI along with other police officials was present in the Main Bazar, Sampla in connection with the investigation of some case. Complainant-Satpal met him

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there and presented an application to the effect that his nephew namely Ravinder (since deceased) son of Satbir was returning from his school and on the way, he boarded the vehicle of Naveen (accused/convict) son of Jaipal but he did not return till that time nor was Naveen telling about his whereabouts. Naveen was a man with a criminal background and he suspected that Naveen had concealed Ravinder somewhere. On this application, a case under Section 364 IPC was registered and investigation was carried out. During investigation, accused Naveen was arrested and he made a disclosure statement regarding the murder of Ravinder and burial of his dead body in the fields. Thereafter, the dead body of Ravinder was got recovered by the accused and Section 302 IPC was added. The school bag of Ravinder was also produced by accused which was taken taken into possession. The car bearing Regn. No.HR-30FT/0414 was also got recovered by the accused which was taken into possession vide separate recovery memo. After completion of necessary investigation, the report under Section 173 Cr.P.C. was prepared and presented in the court for trial.

4. After a perusal of the report under Section 173 Cr.P.C. and the accompanying documents, a *prima facie* case for the offence punishable under Sections 302 and 364 IPC was made out against the accused and he was charge-sheeted thereunder accordingly by the then Additional Sessions Judge, Rohtak vide order dated 9.7.2009, to which he pleaded not guilty and claimed trial.

5. The prosecution to bring home the guilt of the accused examined as many as 14 witnesses and the gist of their examination is as under:-

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PW1 Satpal deposed that 1.9.2008, his nephew Ravinder (since deceased) was returning from his school and on the way accused Naveen took him in his car to one Kothra (room) and killed him there. When Ravinder did not turn up to the house till evening and Naveen did not disclose about his whereabouts, he reported the matter to the police and complaint Ex. PA bearing his signatures was moved by him to the police. He further deposed that Shish Ram, the brother of his grandfather Chet Ram was having one daughter namely Sarjo only and Jaipal son of Sarjo was residing in Village Ismaila in the house of Shish Ram. They were having 11 Bighas of joint land situated at two places. All the parties had equal shares in the land and Jaipal wanted to have his share at one place, to which they did not agree and accused Naveen had threatened them to teach a lesson for not accepting the proposal of Jaipal.

PW2-Dharampal deposed that on 1.9.2008 when he was going to Bahadurgarh on his motor-cycle at about 1.30/2.00 p.m. and reached near the Akhara (wrestling place) of Hoshiar Singh in Village Ismaila, he saw the white Wagon-R car of accused Naveen. He was sitting in the said car on the driving seat and Ravinder (since deceased) was sitting on the adjoining seat. In order to turn the car, accused Naveen made a signal by waving towards the right side. Then he left for Bahadurgarh and came back to Ismaila at about 10/10.15 p.m. and when he reached near the Bus stop of village Ismaila, a police party was found present there along with his relatives and then he came to know about Ravinder having gone missing. Then he narrated about the incident of the presence of deceased Ravinder with the accused.

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PW3-Satbir deposed that on 2.9.2008, he along with Angrej had gone to Police Station Sampla and joined the investigation of this case. Accused Naveen was interrogated in his presence and he disclosed that he had kept concealed the dead body of Ravinder in the pit of the tubewell in his field wrapped in a mattress type cloth (Gudra). He had also disclosed that he had kept concealed the school bag of Ravinder in the Bajra crop in the fields in the area of Bahadurgarh on Ballaur Road behind the Mela ground and that he had exclusive knowledge of the dead body and bag and could get the same recovered. He had proved disclosure statement Ex.PB of accused. He further deposed that thereafter, the accused led the police party to the place of occurrence and demarcated it and a memo Ex.PE was prepared in this regard in his presence which bears his signatures. The memo was also attested by Angrej Singh. He also got recovered the dead body of Ravinder from the pit of the tubewell which was found wrapped in a piece of cloth (Gudra). Thereafter, one iron lock Ex. P6 and the piece of cloth (Gudra) ExP5 were taken into possession vide recovery memo Ex.PC. He further deposed that accused Naveen led the police party to the Mela ground on Ballaur Road and got recovered a school bag and books of deceased Ravinder from the fields of Bajra which was taken into possession vide recovery and identification memo Ex.PD. He proved bag Ex. P7 and books Ex.P8 to Ex. P12, copies Ex.P13 to Ex. P20 and Geometry Box Ex. P21.

PW4-Anil identified the dead body of Ravinder son of Satbir in PGIMS, Rohtak.

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PW5-Dr.Sunita Dhaniya conducted the post mortem examination on the dead body of Ravinder son of Satbir Singh vide PMR Ex.P24 on Police request Ex. P22 and opined that the cause of death of deceased Ravinder was due to strangulation by ligature material which was sufficient to cause death in the ordinary course of nature. After going through the FSL report, this witness opined that there was no sodomy. She also proved skigram showing the injuries as Ex. P24/A, B and C and also identified the shirt Ex.P25, pants Ex.P26, one pair of grey socks Ex.P27 and Ex. P28, shoes Ex. P29 and Ex. P30 as handed over by her to the police. She also proved two glass slides Ex.P31 and Ex. P32 and cotton wool Ex. P33, small cut pieces of cloth and one cloth rope Ex. P34 to Ex.P36. She also opined that the ligature marks found on the neck of the deceased and as described in Ex.P24/A, B and C and the injuries mentioned in the PMR were the result of cloth rope Ex. P36.

PW6-Ram Parkash, ESI had taken out the parcels from the Malkhana and had handed over the same to EHC Shri Bhagwan for depositing the same to the FSL and has tendered his affidavit Ex. P37 in this regard.

PW7-EHC Shri Bhagwan tendered his affidavit Ex. P38 regarding deposit of case property to FSL, Madhuban.

PW8 ASI Hawa Singh recorded formal FIR Ex. PA/1 and made his endorsement Ex.PA/2 after receipt of complaint Ex.PA from SI Rajender Singh through HC Shamsheer Singh and had also sent the special reports to Illaqa Magistrate, S.P. and D.S.P.

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PW9-HC Surender Singh deposed that on 2.9.2008 on the asking of SI Rajender Singh, he reached at the place of recovery of the dead body and took seven snaps of the dead body and the Kothra (room) and then took snaps of the place of recovery of the school bag, pencil, books and notebooks etc. and proved the photographs Ex. P39 to Ex.P48.

PW10-EHC Satpal deposed about delivery of the special reports by him to the Illaqa Magistrate, S.P. and D.S.P. without any loss of time. He also deposed that on 2.9.2008 after post mortem examination, the doctor had handed over to him three sealed parcels including sample seal which he had handed over to Rajender Singh SI, who took the same into possession vide recovery memo Ex. P49.

PW11-Rajbir Singh, Patwari deposed about preparation of Aks-sizra Ex.P50 of the field where the dead body of Ravinder was found lying.

PW12-Shamsher Singh deposed about making disclosure statement Ex. P51 by accused Naveen in his presence regarding concealment of car No.HR-30FT/0414 and recovery thereof vide recovery memo Ex.P52 which bore his signatures.

PW13-Rajender Singh SI the Investigating Officer of this case deposed about the various proceedings conducted by him during the course of investigation of this case.

PW14-Vijender Singh Inspector prepared report under Section 173 Cr.P.C. after completion of investigation of this case.

6. The prosecution, besides the oral evidence, relied upon the following documents in support of its case:-

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Ex. :PA. Dt 1.9.2008
 Ex.PB. dt. 2.9.2008
 Ex.PC. dt. 2.9.2008

Ex.PD. dt 2.9.2008

Ex. PE. dt. 2.9.2008
 Ex.P1 to P4.
 Ex. P5.
 Ex.P6.
 Ex.P7.
 Ex.P8 to 12.
 Ex.P13 to 20.

Ex.P21
 Ex. P22 dt. 2.9.2008
 Ex.P23 dt. 2.9.2008
 Ex.P24 dt. 2.9.2008
 Ex.P24/A to P24/C
 Ex.P25.
 Ex.P26
 Ex.P27 and 28.
 Ex. P29 and 30.
 Ex.P31 and 32.
 Ex.P33
 Ex.P34 to 36
 Ex.P37 dt. 13.1.2010
 Ex.P38 dt. 13.1.2010
 Ex.P39 to 48
 Ex.P49 dt.2.9.2008

Ex.P50 dt. 22.9.2008
 Ex.P51 dt. 3.9.2008
 Ex.P52 dt. 3.9.2008
 Ex.P53 dt. 1.9.2008
 Ex.P54 dt. 1.9.2008

Complaint.

Disclosure statement of accused Naveen.
 Recovery memo of lock and piece of cloth

Recovery memo of school bag, five books and eight note-books with Geometry box and identification of deceased.

Memo of demarcation.

FSL Reports

Piece of cloth.

Lock.

Bag

Books

Note-books.

Geometry box.

Application for post-mortem.

Inquest report

PMR

Skigrams

Shirt.

Pant.

Socks

Shoes.

Glass slides.

Cotton wool.

Pieces of cloths and rope.

Affidavit of Ram Pakash.

Affidavit of Shri Bhagwan

Photos.

Seizure memo of cloths of the deceased handed over to the police by the doctor.

Akas Sijra

Disclosure statement of accused.

Recovery memo of Car and RC.

Endorsement on complaint Ex. PA.

Rough site plan of the place of from where the deceased was kidnapped.

Ex.P55 dt 2.9.2008	Rough site plan of the place of Recovery of dead body.
Ex.P56 dt. 2.9.2008	Rough site plan of the place of Recovery of school bag.
Ex.PA/1 dt. 1.9.2008	FIR.
Ex.PA/2 dt. 1.9.2008	Endorsement regarding registration of the FIR.
Ex. P57	RC of the car of the accused.
Ex. P58 dt. 3.9.2008	Rough site plan of the place of the recovery of the car.

7. After the prosecution closed its evidence, statement of the accused was recorded under Section 313 Cr.P.C. in which he denied the allegations of the prosecution and claimed to be innocent stating that the complainant party wanted his family to quit the village so that they could be able to grab their property because his family had come from village Sisana. So, the complainant party and other co-villagers were not happy with their presence in the village and they took them as intruders. However, no defence evidence was lead.

8. Based on the evidence led, the appellant came to be convicted and sentenced as under:-

Offence under Sections	Sentence	Fine	In default of fine
364 IPC	RI for 10 years	Rs.20,000/-	RI for 06 months
302 IPC	RI for life	Rs.20,000/-	RI for 06 months

Both the sentences were ordered to run concurrently.

9. It is the, aforementioned, judgment of conviction which is under challenge in the present appeal.

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10. The learned counsel for the appellant contends that the complainant/PW1-Satpal was not an eye-witness to the occurrence. At best, his evidence would amount to 'hearsay' or based on suspicion. The 'last seen' evidence of Dharampal (PW2) could not be believed because he was a close relative of PW3-Satbir. The prosecution case was doubtful. The FIR came to be registered on 01.09.2008 at 10.00 PM. As per the inquest report (Ex.P23) the body was discovered on 02.09.2008 at 2.30 PM on the disclosure statement of the appellant. However, as per the memo of arrest and the deposition of PW13-Rajender Singh who is the Investigating Officer in the present case, the appellant was arrested at 03.30 PM. Apparently, once the arrest of the appellant was later in point of time and the inquest report showing the discovery of the dead body was earlier though the disclosure statement of the appellant, the entire prosecution case becomes doubtful and the appellant was entitled to acquittal on this ground alone.

11. The learned State counsel and counsel for the complainant, on the other hand, contend that merely because PW2-Dharampal was a relative of PW3-Satbir did not mean that his statement was to be discarded. He had categorically deposed that he had seen the appellant in the company of the deceased and had narrated the said fact in the evening to the Investigating Officer. As regards the alleged discrepancy between the inquest report which showed the body being discovered at 02.30 PM on 02.09.2008, whereas, the arrest of the appellant being shown later at 03.30 PM on the same day, they contend that no such question was put to Investigating Officer (PW-13) in his cross-examination regarding the time of the arrest of the appellant. Once a

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specific question had not been put to the Investigating Officer, a mere line in the cross-examination of the Investigating Officer that the accused had been arrested at 03.30 PM had little significance and the case of the prosecution could not be made doubtful on this ground alone. The bag with books and the car used in the occurrence had also been recovered from the accused which further established his guilt. They, therefore, contend that no fault could be found with the well-reasoned judgment of conviction passed by the Trial Court and the present appeal was liable to be dismissed.

12. We have heard the learned counsel for the parties and gone through the LCR.

13. A perusal of the record would reveal that so far as the statement of PW1-Satpal (complainant) is concerned, apparently, he is not an eye-witness but has got registered the FIR on the basis of 'hearsay' evidence. Therefore, his statement has little evidentiary value.

14. As per the case of the prosecution, the FIR was registered on 01.09.2008 at 10.00 PM. As per the inquest report, the body was discovered on 02.09.2008 at 2.30 PM. However, as per the arrest memo and the cross-examination of PW12-Shamsher Singh, the appellant was arrested at 03.30 PM. This discrepancy is fatal to the prosecution case inasmuch as it is the case of the prosecution that the body was recovered pursuant to the arrest and disclosure statement of the appellant. Once the arrest of the appellant itself was shown at 03.30 PM, the question of the discovery of the dead body at 02.30 PM on the same day does not arise. While it is true that no question regarding the time of the arrest was put to the Investigating Officer, it is

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equally true that as per the record (arrest memo) and the cross-examination of the Investigating Officer PW13-Rajender Singh, the arrest is indeed shown to be at 03.30 PM on 02.09.2008. This discrepancy is fatal to the prosecution case.

15. Further, taking the last seen evidence of PW2-Dharampal to be the gospel truth, the said evidence without any other corroborating material would be insufficient to establish the culpability of the appellant.

16. In view of the aforementioned discussion, the purported recovery of a bag of books or a vehicle at the instance of the appellant is of little significance.

17. Keeping in the view the totality of the facts and circumstances, the impugned judgment of conviction and order of sentence dated 15/16.07.2011 passed by the Addl. Sessions Judge, Rohtak cannot be sustained and therefore, we allow the appeal, set aside the judgment of conviction and order of sentence and acquit the appellant of the charges framed against him.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

24.09.2024

JITESH

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