

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-860-2003 (O&M)
Reserved on: 25.07.2024
Date of decision: 2.08.2024

DHARAMBIR AND ANOTHER

...Appellants

Versus

STATE OF HARYANA

...Respondent

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

Present: Mr. V.P. Sangwan, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 30.09.2003, upon Sessions Case No.100, of 1999, by the learned Additional Sessions Judge, Bhiwani, wherethrough, in respect of charges drawn for an offence punishable under Section 302 read with Section 34 of IPC, he recorded a verdict of conviction against the convicts-appellants. Moreover, through a separate sentencing order of 07.10.2003, the learned trial Judge concerned, imposed, upon, the convict-appellants both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

“3. After hearing convicts in person, learned counsel representing convicts as well as learned Public Prosecutor for State and going through record of the case, no evidence in the matter of sentence is proposed to be led by either of the parties. Section 302 of the Indian Penal Code stipulates minimum punishment of imprisonment for life with payment of fine and as such considering aforesaid submissions of two convicts as made before the Court, it

shall be reasonable to direct convicts namely Dharambir and Hawa Singh to undergo imprisonment for life each and also to pay fine of Rs.10,000/- each for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. In the event of default in making payment of imposed amount of fine, convicts shall also undergo rigorous imprisonment for an additional period of two years each.”

2. 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 convicts.

3. The convicts become aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, they are 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.PH is assigned. It is recorded therein, that on the night intervening 14/15.11.1988 at about 7/8 p.m., his nephew Mahabir was called and taken by accused Dharambir by saying to accompany him as he had to bring oil for the tractor from Jui. At that time accused Hawa Singh son of Hari Singh was with him. Upon this Dharambir, Hawa Singh and Mahabir had gone on tractor to fetch oil in the night. Around the mid night accused Dharambir Singh and Hawa Singh had brought Mahabir on the tractor and had left him on a cot under a blanket in front of his (Mahabir's) shop. In the morning when Mahabir did not wake up then Mange Ram of Sher Singh went near the place where Mahabir was lying and found him dead. Blood was oozing out from his nostrils. At this, he (Surjan Singh, complainant) and his nephew Azad Singh also visited the spot and

Mahabir was pushed from the running tractor by accused Hawa Singh and Dharanbir on account of taking place of sudden altercation between them. Afterwards they left Mahabir in the injured state on a cot of his shop. Originally, case under section 304 of the IPC was registered.

INVESTIGATION

5. During investigation, blood stained BAAN of cot upon which Mahabir deceased was lying was put in a sealed parcel. Tractor HRO-1571 was taken into custody from accused Dharambir. On 15.11.1998 both accused jointly made extra judicial confession before PWs Tuhi Ram and Suresh Mann in the presence of Umed Singh son of Ram Chander to the effect that on the night of 14.11.1998 along with Mahabir deceased had gone on a tractor to bring oil and on the way they had consumed excessive liquor and on the return journey to village Laad they pushed Mahabir deceased from the running tractor and resultantly he was killed. Accused persons also told Tuhi Ram that since he was relative of a Sarpanch and accused persons, therefore, they had told the incident to him for enabling them to produce before the police. Afterwards Tuhi Ram along with accused persons Dharambir and Hawa Singh had gone on the tractor to police station and the tractor was then driven by accused Dharambir. At T point of bus stand, Police met them and accused persons were produced before the Police by Tuhi Ram. The tractor on which they were travelling was also taken into police possession. Accused on being arrested on 15.11.1998 were produced before the Illaqa/Duty Magistrate, on 16.11.1998. Considering the facts and circumstances of the case, on 19.11.1998 the offence in the case was changed from Section 304 IPC to Section 302 IPC. Inquest proceedings were also conducted. Post mortem examination on the dead body of Mahabir was also got carried out. Statements of the witnesses recorded and after completion of

necessary investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate.

COMMITTAL PROCEEDINGS

6. Since the afore offence was exclusively triable by the Court of Session, thus vide committal order dated 10.02.1999 the learned Sub Divisional Judicial Magistrate, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 14 witnesses and, subsequently, the public prosecutor closed the 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, they did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS

8. The learned counsel for the aggrieved convicts-appellants has argued before this Court, that the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support 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

9. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convicts 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, BASED ON THEORY OF LAST SEEN PROPAGATED BY PW-8, THE SAID PROPAGATION IS THE INITIAL/PRIMARY LINK IN THE CHAIN OF INCRIMINATORY CIRCUMSTANCES AS ERECTED BY THE PROSECUTION AGAINST BOTH THE ACCUSED

10. The theory of last seeing of the accused and the deceased together, is propagated by PW-8 Surjan. PW-8 in his examination-in-chief has echoed that about one year and ten months ago, in the evening, when he was sitting at the shop of Mahabir, then accused Dharambir and Hawa Singh thus came on a tractor at the shop of Mahabir. He further echoed therein that the deceased-Mahabir was then accompanying accused Dharambir, and further that besides himself (PW-8), Ram Chander Nambardar, Azad and Mange were also present there. He continued to testify that next morning, Mange told him that Mahabir was lying dead on the cot in front of his shop, and that his nose was bleeding. He further stated that he went to the spot, and saw that the dead body was covered with a blanket, and, that blood was oozing from his nose, whereupon he left the spot, whereas, Mange and Azad went near the dead body. Resultantly, through the above made echoings in his examination-in-chief, thus PW-8 erected the incriminatory link qua his last seeing the accused and the deceased together.

11. The above witness was subjected to the ordeal of a rigorous cross-examination. However, no successful unearthings were made therein, rather by the learned defence counsel, but suggestive, that the above testification(s), as made by him, in his examination-in-chief, rather were either false, contrived or concocted. Therefore, naturally immense evidentiary credit, is to be assigned to the testification of PW-8. Resultantly, an inference is garnered, that the accused and the deceased were last seen together by PW-8. Importantly since both the accused and the accused were last seen on the relevant evening, whereas, an intimation about the demise of deceased thus becoming received by the said witnesses on the subsequent morning. Therefore, the cogent link (supra), in the

chain of incriminatory circumstances, as becomes erected by the prosecution against the accused, but naturally therebys becomes cogently established by the prosecution.

EXTRA JUDICIAL CONFESSION MADE BY ACCUSED BEFORE PW-5 AND PW-7

12. The makings of an extra judicial confession by the accused, before the PW-5 and PW-7, is also vital link in the chain of circumstantial evidence, as, becomes erected by the prosecution against the accused. The prosecution for proving, the makings of an extra judicial confession, by the accused to PW-5 and to PW-7, wherebys they extra judicially confessed their incriminatory participation, in the crime event, thus before PW-5 and PW-7, thus obviously led the PWs (supra), to step into the witness box. In their respective depositions as comprised in their respective examinations-in-chief, they testified that on 15.11.1998, when both (supra), along with Umed Singh were sitting in the house of PW-7, then Dharambir and Hawa Singh came there on a tractor. Both the witnesses (supra) in unison also have deposed that accused Dharambir unfolded to them that on the night of 14.11.1998, both the accused had gone to fetch oil. Furthermore both in unison further testified that on the said night of 14.11.1998, thus deceased Mahabir Singh also accompanied them for the said purpose. Further they both unequivocally deposed in unison that the accused unfolded to them that enroute they had consumed excessive liquor, and near village Kakroli, they pushed the deceased from the tractor and killed him. The accused are stated by the witnesses (supra), to request them that since you are respectively the Sarpanch and their relative, therebys they have unraveled this fact to them, and that you may handover them to the police. After this conversation, both the accused along with both the PWs boarded the tractor which was being driven by

accused Dharambir hence to the bus stand, and, that at T point, they met the police, and, the police took away the tractor and arrested the accused.

13. Though, both these witnesses became subjected to the ordeal of an exacting cross-examination, but no elicitations were made from them by the learned defence counsel, wherefrom any inference would become mobilized, that they have either wilted under or succumbed, to the exacting cross-examination(s) as become made upon them, nor a closest reading of their respective cross-examinations thus discloses, that they therein denied all the above speakings, as became made by them, in their respective examination(s)-in-chief. Resultantly, therebys completest *inter se* corroboration becomes rendered by them in respect of the above makings of extra judicial confessions to both of them, thus by the accused. Therefore, the said incriminatory link in the chain of circumstance, did become invincingly proven by the prosecution.

14. Since the investigating officer also supported, the deposition of PW-5 and PW-7, as relates to theirs producing the accused, before the police. Therefore, it appears that after the present appellants making an extra judicial confession before PW-5 and PW-7, rather both the accused, as consistently testified by the witnesses (supra), thus boarded the tractor for theirs heading towards the police station concerned, enroute theirs encountering the police team, and wherebefore whom, PW-5 and PW-7 produced the accused, and, which resulted in the apposite arrest memo and personal search memo becoming drawn. Therefore, besides conspicuously, when there is no suggestion made either to PW-5 or PW-7 or to the investigating officer concerned, thus revealing, that the present appellants were not on friendly terms, either with PW-5 or with PW-7, so as to disable the appellants to make an incriminatory extra judicial confession, thus to PW-5 and to PW-7, about their participation in the crime event. In sequel, the extra judicial confession as made by the present appellants

to PW-5 and to PW-7, thus can be stated to be made to a person/persons in whom the present appellants reposed deep trust and confidence, and, thereby it acquires immense evidentiary vigor.

MEDICAL EVIDENCE (POST MORTEM REPORT)

15. The autopsy upon the body of deceased Mahabir Singh was conducted on 15.11.1998 by PW-6. PW-6 has proven *qua* his, authoring Ex.PG, as relates to the autopsy as made upon the body of deceased.

16. Moreover, he has proven that the cause of death of deceased Mahabir Singh, was owing to coma owing to head injuries already described in PMR. All the injuries were declared to be ante mortem in nature and were sufficient to cause death in ordinary course of life. The relevant ante mortem injuries as noticed by PW-6 on the body of deceased are extracted hereinafter.

- “1. An abrasion of size 3x2 cm on right elbow.*
- 2. An abrasion of size 4x2cm over left knee.*
- 3. Abrated red buse of 16x5 cm, transversely on right lateral aspect of chest.*
- 4. Red abrated bruise of 6x4 cm on left side of forehead. Extravasation of blood was present in various place of tissue.*
- 5. Lacerated wound of 3x2 cm x bone deep over occipital region of head. Extravasation of blood was present in various planes of tissues.*
- 6. On deeperdisseration hemotoma over occipital region of head and whole of posterior aspect of neck was present. Hemotoma was present in deep muscle area.*
- 7. On opening of cranialcavity, suodural clotted blood was present over left frontal lobe. Left lobe of brain and large amount of clotted blood was present over the brain stem.”*

FSL REPORT

17. Ex.PE became sent to the FSL concerned, through C-Dharambir-994. After examinations being made at the FSL concerned, *qua* the contents of

the sealed parcels, thus the expert concerned, drew the hereinafter extracted results.

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<u>Parcel No.</u>	<u>No. & Seal impression</u>	<u>Description of parcel(s)</u>
I.	1-SKS	It contained exhibit 1. Exhibit-1. Cut pieces of Ban of charpai stained with dark brown stains.
II.	5-Doctor	It contained exhibit 2a to 2e. Exhibit 2a. One checked terrycot Shirt stained with numerous large and small dark brown stains. Exhibit 2b. One blue terrycot pants stained with several large and small brownish stains. Exhibit 2c. One cut opened blue cotton Banian stained with numerous large and small dark brown stains. Exhibit 2d. One blue terrycot Nicker stained with numerous large and small dark brown stains. Exhibit 2e. One pair of brown nylon socks.

LABORTORY EXAMINATIONS

Laboratory examinations were carried out to detect the presence of blood on the exhibits. Blood thus detected was subject to serological tests to determine its species of origin. Based upon these examinations the results obtained are given below:-

- 1. Exhibit 1 (Baan) was stained with blood stains.
- 2. Exhibit 2a (Shirt) exhibit 2c (Banian) and exhibit 2d (Nicker) were stained with numerous large and small blood stains.
- ii Exhibit 2b (Pants was stained with several large and small blood stains.
- iii Traces of blood too small for serological analysis were detected on exhibit 2e (socks).

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Results of Serological Analysis of Blood

<u>Exbt. No.</u>	<u>Name of Exhibit</u>	<u>Origin</u>
1.	Baan	Human
2a.	Shirt	Human
2b.	Pants	Human
2c.	Banian	Human
2d.	Niker	Human”

18. An analysis of the above made conclusions, as became drawn by the experts concerned, working at the FSL concerned, and but after their examining the contents of the sealed cloth parcels, as became sent there, does but naturally bring forth an inference, that the prosecution has hence invincibly proven, that the blood on the *Baan* in fact was human blood. Therefore, irrespective of the fact that the prosecution has been unable to bring forth evidence, that the blood occurring on the *Baan* was not belonging to the blood group of the deceased, yet therebys the said stains of blood on the recovered knife are to be concluded to be of the blood group of the deceased, especially when no evidence became adduced by the defence, suggestive that the blood stains borne on *Baan* rather not belonging to the blood of the deceased, thus through the defence adducing the FTA card of the deceased.

19. The above medical evidence also supports the proven incriminatory link (supra) respectively relating to the theory of last seen of the accused with the deceased together and qua the making of a credible extra judicial confession of their guilt by the accused to the PWs (supra).

FINAL ORDER

20. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convicts-appellants 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 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.

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.

21. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

02.08.2024
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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