



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-655-DBA-2002 (O&M)
Reserved on: 25.7.2024
Date of Decision: 05.8.2024

State of HaryanaAppellant

Versus

Ram Singh and othersRespondents

2. CRR-1179-2002 (O&M)

Karnail SinghPetitioner

Versus

State of Haryana and othersRespondents

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

Present: Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana
for the appellant (in CRA-D-655-DBA-2002).

Mr. Akashdeep Singh, Legal Aid Counsel
for respondents No. 1 to 5 (in CRA-D-655-DBA-2002) and
for respondent No. 6 (in CRR-1179-2002).

Mr. Pragbir S. Dhindsa, Advocate
for the petitioner/complainant (in CRR-1179-2002).

Respondent No. 2 (in CRA-D-655-DBA-2002) and
Respondent No. 3 (in CRR-1179-2002) namely
Charanjit Kaur @ Jeet Kaur had already expired.

SURESHWAR THAKUR, J.

1. Since both the appeal (supra) as well as criminal revision
(supra) arise from a common verdict, made by the learned trial Judge
concerned, hence both are amenable for a common verdict being made

thereons.



2. Both the appeal as well as the revision petition are directed against the verdict drawn on 16.8.2001, upon Sessions Case No. 14 of 1998, by the learned Additional Sessions Judge, Ambala, wherethrough in respect of charges drawn for offences punishable under Sections 302 read with Section 120-B IPC and under Section 201 IPC, he made a verdict of acquittal qua all the accused.

3. The State of Haryana, and, complainant Karnail Singh become aggrieved from the above drawn verdict, and, are led to institute thereagainst respectively the instant appeal and the criminal revision before this Court.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PH is assigned. The prosecution case, is that, on 27.2.1998, Karnail Singh and Gurmej Singh, were were real brothers, went to their fields to bring fodder. They returned to their respective houses in the evening. However, on the next (i.e. on the evening of 28-2-98) Charranjit Kaur wife of Gurmej Singh told Karnail Singh that Gurmej Singh had not returned to his house since last evening and his whereabouts are not known. Thereafter, Karnail Singh alongwith one Gurdial Singh started searching Gurmej Singh, but they could not trace him till 1-3-1998. On 1.3.1998, when they were present at village Ugala in search of Gurmej Singh, some one told them that a dead body was lying in the pits near the fields of Lachman Singh. Both Karnail Singh and Gurdial Singh went there and found that the dead bod which was lying in the pits was that of Gurmej Singh. One piece of cloth (Patka) of white colour was lying near the dead body. They took out the dead body out of the pits and found that there were marks of strangulations on the throat of the decease. Karnail Singh left Gurdial Singh



to guard the dead body and he himself went to the police station to report the matter. On his way near railway crossing of village Adhoya, he met the police party headed by Phool Chand Sub Inspector. Karnail Singh informed him about the above said incident. SI Phool Chand after recording his statement (Ex. PG), made his endorsement Ex.PG/1 thereon and sent the same to the police station on the basis of which formal FIR, Ex.PH was recorded.

Investigation proceedings

5. During the course of investigations, the investigating officer concerned, visited the spot, and, prepared the inquest report Ex.PDD and site plan Ex.PEE of the place where the dead body was lying. He recorded the statements of witnesses. Piece of cloth (Patka) Ex.P1 which was lying by the side of the dead body, was taken into possession and was made into a parcel which was sealed with the seals having impressions PC. Recovery memo Ex.PFF was prepared to this effect. Thereafter, he drafted an application Ex.PD requesting the Medical Officer to conduct the post mortem on the dead body and handed over the same to Balbir Singh HC with a direction to take the dead body to Civil hospital for getting the post mortem conducted. Accordingly, Balbir Singh HC took the dead body to Civil hospital. On 2-3-1998 post mortem was conducted on the dead body of Gurmej Singh. After getting the post mortem examination, the dead body was handed over to the relatives of the deceased. Thereafter, the investigating officer concerned, went to village Kaserla Khurd and recorded the statements of Sucha Singh and Nirmal Singh and searched for the accused, but he could not trace them till 7-3-1998. On 7-3-1998, when the investigating officer concerned, was present at Bus Stand Pinjore, one Jagdish, Gautam and Raj Kumar met him.



They assured him that they would produce the accused before him very soon. He recorded the statement of Raj Kumar to this effect. On the same day, after some time, the above said persons produced Ram Singh, Dharam Pal, Vipin and Charanji kaur before the investigating officer concerned, at Bus Stand Pinjore itself. The investigating officer concerned, took them in custody. Thereafter, the accused were taken to the police station and were put in lock up. The said accused were interrogated by the investigating officer concerned, and, they got recorded their disclosure statements, in pursuance whereof relevant recoveries were made. During the course of investigation, it was revealed that Charanjit Kaur wife of Gurmej Singh was having illicit relations with Ram Singh, and, in fact both of them had contracted marriage at Chandigarh. During the course of investigation it was also revealed that Ram Singh used to visit the house of Charanjit Kaur at village Kaserla Khurd and on the fateful evening i.e. 27-2-1998 he alongwith the remaining accused had visited village Kaserla Khurd in a Maruti Van bearing registration No. HK-37-0280 which was being driven by Dharam Pal accused and Gurmej Singh was with them when they left the village. They had gone towards village Ugala. Certain documents were also recovered from the possession of the accused on the basis of the disclosure statements made by them. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence 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 21.5.1998, hence proceeded to commit



the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused-respondents for the offences punishable under Section 302 read with Section 120-B IPC and under Section 201 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

9. 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.

**Submissions of the learned State counsel and of the learned counsel
for the petitioner**

10. The learned counsel for the appellant-State (in CRA-D-655-DBA-2002) as well as the learned counsel for the petitioner (in CRR-1179-2002), have made vehement submissions before this Court, that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, they contend, that the impugned verdict of acquittal be quashed, and, set aside.

11. The learned State counsel rests the above argument, on the ground that, when prosecution has been able to prove the motive behind the murder of the deceased. Moreover, when the theory of last seeing together of



the deceased, and, the accused, as propagated by PW-11, has been cogently established by the prosecution. Resultantly, when link (supra) in the chain of circumstantial evidence, thus became completely, and, unerringly established, as such, this Court is required to interfere with the verdict of acquittal, as became pronounced by the learned trial Court concerned.

**Submissions on behalf of the learned counsel for
the accused-respondents.**

12. On the other hand, the learned counsel for the accused-respondents submits, that the verdict of acquittal as has been challenged before this Court, is well merited, thus it does not require any interference being made by this Court.

13. Before proceeding to delve into, and, to also make an adjudication, upon the contentions (supra), as became addressed before this Court by the learned State counsel, and, by the learned counsel for the accused, as well as by the learned counsel for the petitioner-complainant, it is deemed necessary to extract the relevant paragraphs borne in the impugned verdict, wherein becomes enclosed the reasons for recording the finding of acquittal. The said paragraphs are reproduced hereinafter.

“12. The next circumstances on which the prosecution has relied upon is the evidence of “last seen”. Sucha Singh (PW-11) has stated that on 27.2.1998 at about 9.30 P.M., he along with his brother-in-law Nirmal Singh was present at his house. At that time a Maruti van came and stopped near the tubewell and all the accused except Dharam Pal came out of it. They went towards the house of Gurmej singh. He along with Nirmal singh went near the van and had a talk with its driver who old his name as Dharam Pal. He has further stated that after sometime all the four accused came back alongwith Gurmej Singh and went towards village Ugala in the said van. Thus, according to Sucha Singh he had seen Gurmej Singh going



alongwith the accused in the van towards village Ugala on 27-2-98 at about 9-30 p.m. According to Karail Singh (PW9) Charanjit Kaur told him that Gurmej had not come to his house since evening of 27-2-98. There is no other evidence except the statement of Sucha Singh to prove that the deceased was last seen in the company of the accused on 27-2-98. Nirmal Singh who allegedly also saw the deceased in the company of the accused has not been produced in the witness box for the reasons best known to the prosecution. The statement made by Sucha Singh, to my mind does not inspire confidence. He has further stated that on the next day he alongwith Nirmal Singh went to village Jadhon in Punjab and returned to his village on 2-3-98. Therefore, for the first time, the police party met him on 2-3-98 and he got the opportunity to tell the above said facts at the earliest on that day. This part of his statement stands belied from the statement of Karnail Singh (PW9) who in his cross-examination has stated categorically that on 28-2-98 he had a talk with Nirmal Singh and Sucha Singh and he had made enquiries from them about the whereabouts of Gurmej Singh but they had expressed their ignorance. Thus, had Sucha Singh seen Gurmej Singh in the company of the accused he would have certainly told Kamail Singh about the fact that Gurmej Singh had gone towards village Ugala in a Maruti van alongwith the accused on the night of 27-2-98. The mere fact that he did not disclose these facts to Kamail Singh on 28-2-98 itself creates a doubt about the truthfulness of his version and it appears that he concocted a false version later on for the reasons best known to him. At this stage, it would be relevant to discuss about the date of arrest of Charanjit Kaur, Charanjit Kaur in her statement under her section 313 Cr.P.C. has stated that on the fateful day i.e. on 1.3.98 she was at Yamuna Nagar when she came to know about the death of her husband Gurmej Singh she immediately came back to her village and joined the cremation, ceremony. According to Phool hand (PW-15) she was for the



first time produced before him by Raj Kumar on 7-3-1998 and she was arrested on that day; whereas according to Karnail Singh, Charanjit Kaur was arrested by the police soon after the cremation of the dead body. So in such circumstances keeping in view the fact that her photographs with Ram Singh were found in her trunk on the day of cremation the possibility that the version told by Sucha Singh was concocted later on cannot be ruled out. In these circumstances, from the evidence discussed above, it is not proved that deceased Gumej Singh was last seen in the company of the accused by Sucha Singh (PW11) on 27-2-98.

13. In order to prove the recoveries from the accused, it was necessary for the prosecution to prove as to on which date the accused were arrested. Phool Chand (PW15) has stated that on 7-3-1998 he was present at bus stand Pinjore where Jagdish, Gautam and one Raj Kumar met him. They assured to produce all the accused before him and thereafter after sometime Raj Kumar produced all the accused present in the Court at the bus stand of Pinjore itself. He arrested them and took them to the police station. The version stated by the Phool Chand (PW15) is not corroborated from the statement of Raj Kumar, for the best reason s known to the prosecution. Raj Kumar has been with-held. He was the best person to tell as to when accused came to him and for what purpose and how and in what circumstances, he produced the accused before Phool Chand. Otherwise also, as mentioned above, according to Karmail Singh, Charanjit Kaur was arrested on the day of cremation of the dead body; whereas according to Charanjit Kaur she was arrested from her house on the next day of cremation on mere suspicion. Ram Singh has stated that he was taken by the police from his house on 2-3-98. Thus, the statement of Phool Chand regarding the date of arrest in such circumstances cannot be relied upon.

Furthermore, the blanket Ex. P-21 and pair of shoes Ex.P-22 and Ex.P-23 (alleged to have been recovered on the



basis of the disclosure statement Ex. PBB made by Ram Singh) is of no consequence as there is no evidence whatsoever on record to prove that the blanket and pair of shoes belonged to the deceased. No evidence whatsoever, has been led to prove that the Blanket and pair of shoes belonged to the deceased. Those articles have not been got identified from anyone nor is there any evidence to prove that Gurmej Singh was having blanket with him when he left the house nor is there any evidence to prove that the pair of shoes (Ex. P-22 and Ex. P-23) was worn by him when he left the house for the last time. Similarly, the recovery of diary and electric bill from Vipin, Mohit and Deepak vide recovery memo Ex.PAA is of no consequence as both the documents have not been connected with the deceased. There is no evidence that the said bill was received by Gurmej Singh and it was with him at the time he left his house for the last time, nor is there any evidence to prove that the diary Ex. P-19 belonged to Gurmej Singh as the same has not been got identified from anyone nor is there any evidence to prove that the writing in the said diary is in the hand of Gurmej Singh. Otherwise also, the disclosure statement made by Vipin, Mohit and Deepak and the recovery based thereon are illegal as Vipin had already told about the place of concealment of these Knowley articles and these articles were in the knowledge of all the accused and only Vipin Kumar was not aware of the place of concealment.”

Reasons for dismissing the instant appeal

14. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsel for the appellant, and, by the learned counsel for the petitioner rather are unworthy of acceptance, and, therebys they are rejected. Consequently, finding no merit in both the appeal as well as in the petition, the same are hereby dismissed, and, the verdict of acquittal, as made by the learned trial Court, is



maintained, and, affirmed.

Circumstantial evidence based case

Evidence of last seen

15. The initial incriminatory link in the chain of circumstances is comprised in the evidence of last seeing together of the accused and the deceased. The said evidence is spoken by Sucha Singh (PW-11). PW-11 Sucha Singh in his examination-in-chief, deposed that on 27.2.1998, at about 9.30 P.M. he along with his brother-in-law Nirmal Singh, thus was present in his house. At that time, a Maruti Van came and stopped near the tubewell, and, all the accused except accused Dharam Pal alighted from the said vehicle. Thereafter all the above said accused went towards the house of Gurmej Singh. He further deposed, that he along with his brother-in-law Nirmal Singh went near the van and enquired about the name of the driver of the Maruti Van, upon, which the driver of the van disclosed his name as Dharam Pal. He further deposed that thereafter all the four accused brought Gurmej Singh, with them from his house, and, took him away towards village Ugala in the afore van.

16. Though, PW-11 had deposed that he had last seen the deceased Gurmej Singh thus with the accused. Moreover, the said witness though further deposed that on the next date, he along with Nirmal Singh went to village Jadhhot in Punjab, and, returned to his village on 2.3.1998, whereupon he met the police party for the first time and narrated the above said fact to them. However, the testification (supra), as made by PW-11, is bereft of any vigour. The reason for forming the said conclusion ensues from the factum, that though he testified that apart from him, one Nirmal Singh, thus had also last seen the accused and the deceased together, but to corroborate the said



deposition of PW-11 one Sucha Singh, thus the prosecution became enjoined to also ensure the stepping into the witness box of the said Nirmal Singh. However, the prosecution made no effort to ensure the stepping into the witness box of Nirmal Singh, though, he was a material witness to lend corroboration, and, succor to the testification, as made by PW-11 Sucha Singh. The effect of the omission (supra), is that, thereby this Court cannot, on the solitary deposition of PW-11, despite the fact, it required corroboration theretos being meted by one Nirmal Singh, thus anvil any conclusion, that PW-11 has either well propagated the incriminatory link, qua his last seeing together the accused and the deceased, nor thereby the said link can be said to be cogently established to the hilt by the prosecution.

17. What adds momentum to the above, ensues from the factum, that PW-9 Karnail Singh in his cross-examination, deposed that, on 28.2.1998, he had met Sucha Singh and Nirmal Singh, and, made enquiries about the whereabouts of his brother Gurmej Singh, to which they expressed their ignorance. Therefore, the non-disclosure of the facts (supra) by PW-11 Sucha Singh to Karnail Singh, also creates a doubt about the truthfulness of his version, as carried in his examination-in-chief. Even the said witness in his deposition, as occurs in his cross-examination, deposed that he had not intimated the Sarpanch or the Vice Sarpanch of the village, about the visit of the accused person to the house of Gurmej Singh on 27.2.1998. Resultantly, his deposition is completely tainted, and, thus no credence can become assigned thereto.

18. In addition, accused Charanjit Kaur (since deceased) in her statement under Section 313 Cr.P.C., stated that on 1.3.1998, she was at Yamuna Nagar, and, on coming to know about the death of her husband, she



came back to the village and joined the cremation. However, according to PW-15 Phool Chand, SHO, accused Charanjit Kaur was produced before him by one Raj Kumar on 7.3.1998, and, she was arrested on that day, whereas, as per the statement of Karnail Singh, accused Charanjit Kaur was arrested after the cremation of the dead body. Thus, therebys too, it appears that the witness (supra) is inventing a false version in respect of the crime event. Therefore, from the above facts and circumstances, the prosecution has failed to prove that deceased Gurmej Singh was last seen in the company of the accused. Consequently, the learned trial Court concerned, aptly disbelieved the evidence of last seeing together of the accused and the deceased, as propagated by PW-11.

Dates of arrest of the accused-respondents

19. The investigating officer Sub Inspector Phool Chand (PW-15), deposed that on 7.3.1998, when he was present at Bus Stand, Pinjore, then one Jagdish, Gautam, and Raj Kumar met him, and, assured to produce all the accused before him. To that effect, the said investigating officer also recorded the statement of Raj Kumar. He further deposed, that thereafter after sometime, the said Raj Kumar produced all the accused at the Bus Stand, Pinjore, whereupon he arrested them and put them in judicial lock-up. However, the deposition made by PW-15 in his examination-in-chief, thus is not corroborated from the statement of Raj Kumar (supra), who had rather been given up by the prosecution being won over by the accused. Moreover, as per the statement of Karnail Singh, accused Charanjit Kaur was arrested on the day of cremation of the dead body, whereas, as per accused Charanjit Kaur, she was arrested from her house on the day subsequent to the cremation of the deceased. Similarly, accused Ram Singh stated that he was



taken by the police from his house on 2.3.1998. Therefore, insofar as the statement of PW-15 with regard to date of arrest of the accused is concerned, thus the same cannot be relied upon. Contrarily, since he deposed, that after arresting the accused, he put them in judicial lock-up, thereby when he did not subject the accused to custodial interrogation. Resultantly, the makings of disclosure statements, if any, by the accused, besides the pursuant thereto recoveries, but are to be construed to be lacking in evidentiary worth. The reason for forming the above conclusion emanates from the factum, that when only in pursuance to confessions being made by the accused to the police officer concerned, but during the latter subjecting the accused to custodial interrogation, thus the said disclosure, and, the pursuant thereto made recovery, if are proven to be efficaciously made, do thereby acquire evidentiary vigour.

20. However, in the instant case, the investigating officer concerned, did not put the accused to custodial interrogation, nor when during the course thereof, any confession(s) of guilt was/were made by the accused to the police officer concerned. In sequel, the making of disclosure statement(s), if any, during the course of the accused being in judicial lock-up, and, the further effect, if any, of the recovery(ies), if any, made in pursuance thereof, thus are to be construed to be completely inefficacious, nor any reliance can be placed thereons, by the prosecution, thus to argue that thereby it has discharged the burden of proving the charge to the hilt.

Disclosure statement and recovery(ies) in pursuance thereof

21. Irrespective of the above, though, in pursuance to the disclosure statement of accused Ram Singh, to which Ex. PBB becomes assigned, recoveries of blanket and pair of shoes, to which respectively Ex. P-21 and



P-23 become assigned, became recovered. However, no cogent evidence became adduced by the prosecution, to prove that the said recovered blanket and pair of shoes belonged to the deceased. The said articles were neither got identified from anyone, nor any evidence became adduced by the prosecution qua that the deceased Gurmej Singh was adorning a blanket, and, also was also wearing the pair of shoes, at the time when he left the house for the last time. Insofar as, the recoveries by accused Vipin, Mohit and Deepak vide of diary and electric bill, to which Ex. PAA becomes assigned, are concerned, thus theretos too, no evidentiary vigor can be assigned, as no evidence has been led by the prosecution to prove that the above said recovered articles belonged to deceased Gurmej Singh, nor is there any evidence to prove that deceased Gurmej Singh was the author of the writings in the said diary. Therefore, the said recoveries are not incriminatory in nature.

Post-mortem report

22. The post-mortem report, to which Ex. PB, is assigned, became proven by PW-2. PW-2 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Gurmej Singh, thus his noticing thereons the hereinafter ante mortem injuries-

“1. An abrasion 4x1.5 cm on middle of neck lying transversly on left side of midline. Its medial and was 0.5 cm from midline. The dark red clotted blood was present.

2. A bruise 4.5 cm x 1 cm on left side of neck lying transversly situated 2 cm lateral and slightly below injury no. 1. It was dark red in colour.

3. A bruise 3 x 0.5 cm left side of neck placed obliquely situated 4 cm vertically below the tip of left mastoid process. It was dark red in colour.



4. *An abrasion 5 x 1.5 cm on right side of neck in midline placed transversally medial and was 1 cm from midline. There was dark red clotted blood was present.*”

On dissection of neck echymosis was present in cutaneous tissue on both sides of front of midline. There was presence of dark red clot of blood in the deep fascia and muscular layer for 10 cm in front of neck on both sides of midline. The said witness stated that the other injuries were also found on the person of the deceased concerned, injuries whereof are extracted hereinafter.

“1. *An abrasion 1 cm x .2 cm present on nasal bridge 1.5 cm from route of nose. Clots of blood were present. Nasal bone was fractured.*

2. *An abrasion 1 x 0.4 cm on forehead placed vertically in midline dark red clots of blood was present.*

3. *A linear abrasion 1.2 cm on left side of forehead .5 cm from midline. Dark red clots of blood were present.*

4. *Multiple small abrasion upto 1 cm x 0.5 cm present on antero medial aspect of left leg in lower half. Dark red clots of blood were present.*”

23. Furthermore, PW-2 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to asphyxia and shock as a result of strangulation. All the injuries were opined to be ante mortem in nature.

24. However, though the above opinion about the cause of demise of the deceased underscores the factum of the deceased suffering demise, as a result of strangulation, but since the prosecution has been unable to prove that the accused strangled deceased Gurmej Singh, thereby the opinion (supra) cannot be related to any actionable *actus reus* becoming committed



by the accused.

Final order

25. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Accordingly, both the appeal as well as the revision petition are dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Personal, and, surety bonds, if any, furnished by the accused concerned, are ordered to be forthwith cancelled, and, discharged.

26. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 05, 2024
Gurpreet

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