

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-340-2020 (O&M)
Decided on:- February 20, 2024

Vijay Moulik Dass
...Appellant

Versus

State of U.T. Chandigarh
...Respondent

CORAM:- HON’BLE MRS. JUSTICE LISA GILL
HON’BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Salil Dev Singh Bali, Advocate
for the appellant.

Mr. Deepinder Brar, Additional PP, UT, Chandigarh.

AMARJOT BHATTI, J.

1. Appellant/convict has filed the present appeal against judgment of conviction dated 30.07.2020 and order of sentence dated 05.08.2020 passed by learned Additional Sessions Judge-cum-Judge, Children’s Court, Chandigarh in Sessions Case bearing No. 114 of 2017 dated 07.07.2017, titled as “State Vs. Vijay Moulik Dass” vide which appellant/child in conflict with law (for short ‘CICL’) was sentenced as under :-

Offence U/s	Sentence (<u>Rigorous Imprisonment</u>)	Fine
302 IPC	Life imprisonment with possibility of remission, commutation etc.	Rs. 50,000/-

Out of fine imposed upon CICL, Rs.5,000/- was ordered to be paid to the State and remaining Rs. 45,000/- was ordered to be paid to legal heirs of deceased Mahipal.

2. Brief facts of the case are that on 01.07.2016, SI Des Raj, Incharge, PP-43, UT, Chandigarh along with ASI Devinder Singh, HC Ravinder Singh, Senior Constable Sunil Kumar, on receiving message from SHO, PS-36, reached at Power House, Sector 42, Chandigarh. On directions of concerned SHO, SI Des Raj started investigation and recorded the statement of Eshwar Jall son of deceased Mahipal. The complainant stated that he was doing private job of Tubewell Operator at Sector 42-C, Chandigarh Tubewell for the last 7-8 months. His father namely Mahipal, aged 55 years and younger brother namely Barinder Jall, aged about 25 years had been running a Dhaba adjoining the wall of Power House, Sector 42-C, Chandigarh for the last many years. They used to sleep within the premises of Power House only. His father had brought a boy (appellant/CICL in this case) son of Sunatan Dass r/o village Kharjhan, 14 No. Line, PS-Dibrugarh, Assam from his village about 20 days ago for working at his Dhaba and ever since, he was working in the Dhaba of his father. Another younger boy was also working there. The CICL had thrashed the younger boy working at the said Dhaba who resultantly left. Due to this reason, heated arguments took place between complainant's father and the CICL. On 30.06.2016 i.e. the previous night, the CICL and complainant's father had consumed liquor and thereafter, as usual, after closing Dhaba, his father and CICL slept inside the Power House. On the next day i.e. 01.07.2016 at 6.15 am, complainant after switching on the tubewell went to the Power House and on reaching there, he saw that his

father's throat was slit with a knife (Chhurra) and there were marks of injury on his face. He was lying dead on the bed. On this, he dialled police helpline No. 100. It was alleged that the CICL had run away along with his belongings. His father was murdered by the CICL as he nourished grudge towards his father for scolding him in regard to the incident qua younger boy working at the dhaba.

FIR No. 133 dated 01.07.2016 under Section 302 of Indian Penal Code, 1860 (for short 'IPC') was registered at Police Station Sector-36, Chandigarh on the basis of said statement of complainant. Investigation was started on the spot. During the course of investigation, weapon of offence and wooden handle thereof were recovered from the spot and same were taken in police possession. Photographs of the scene of crime were clicked by Government Photographer. Postmortem on dead body of Mahipal was got conducted from GMSH-16, Chandigarh. Postmortem Report is Ex.P7. Recovered articles were duly deposited in the malkhana. During further investigation, on the basis of secret information, CICL was arrested from Gujjan, District Dibrugarh, Assam on 25.08.2016 and after obtaining his transit remand, he was brought to Chandigarh. During interrogation, appellant suffered disclosure statement on 29.08.2016 and in pursuance thereto, a bag containing red colour blood stained T-shirt, purse containing Aadhar Card and passport size photo of Mahipal, was recovered from ISBT Bus Stand, Sector 43, Chandigarh and accordingly, the said articles were taken into police possession. Statements of witnesses u/s 161 Cr.P.C. were recorded and after completion of all necessary formalities, challan was presented before Juvenile Justice Board, Chandigarh.

3. The Juvenile Justice Board, Chandigarh vide order dated 14.06.2017, took a view that CICL had enough mental and physical capacity to commit the alleged offence and also had the ability to understand consequences thereof, hence it was observed that there was need of trial of CICL as an adult, as per Section 18(3) of the Juvenile Justice (Care and Protection of Children), Act, 2015, accordingly trial of CICL was sent to the Children's Court.

4. CICL was supplied complete set of copy of challan report as provided under Section 207 of Cr.P.C.

5. Learned Additional Sessions Judge, Chandigarh, after hearing arguments, framed charge-sheet against CICL under Section 302 of IPC, which was read over and explained to him in simple language to which he pleaded not guilty and claimed trial.

6. In order to prove the facts of case, prosecution examined HC Ravinder Singh as PW1, ASI Sukhwinder Singh as PW2, HC Yash Pal as PW3, Nitin Kumar as PW4, Jassimran Singh, Medical Officer, GMSH-16, Chandigarh as PW5, Ct. Palvinder Singh as PW6, SI Alam Chand as PW7, HC Rajesh Kumar as PW8, Dr. Ajay Kumar as PW9, SI Devender Singh as PW10, HC Vinod Kumar as PW11, HC Sumir Kumar as PW12, Dr. Vimukhti Chauhan as PW13, HC Manoj Kumar as PW14, HC Naresh Kumar as PW15, SI Sukhwinder Singh as PW16, Dr. Gurdarshan Kaur, Medical Officer, Department of Medicine, GMSH-16, Chandigarh as PW17, Eshwar Jall as PW18 and SI Des Raj as PW19.

7. Statement of CICL was recorded under Section 313 Cr.P.C. to which he pleaded innocence and false implication. However, no evidence was adduced in defence.

8. After hearing arguments advanced by learned Additional Public Prosecutor for the State and learned counsel representing the CICL, he was held guilty and convicted under Section 302 of IPC, as referred above. Feeling aggrieved of this judgment of conviction and order of sentence, present appeal has been filed by the convict.

9. We heard arguments advanced by learned counsel for the appellant and learned counsel representing U.T. Chandigarh and have gone through the record carefully with their able assistance.

Learned counsel for the appellant argued that in this case there is no direct evidence regarding murder of deceased Mahipal. Case of the prosecution is based on circumstantial evidence. "Last Seen" theory has also been pressed in service. There is sole testimony of Eshwar Jall PW18 who deposed that lastly he had seen his father Mahipal with the appellant at the Dhaba at night time and on the next day in the morning, he found his father murdered. Prosecution failed to establish any motive for the murder of Mahipal at the hands of appellant. It was the case of prosecution that appellant had a quarrel with another boy working at Dhaba and for this reason the said boy left the job. On this account, Mahipal scolded the present appellant/CICL and for this reason he murdered Mahipal, the deceased victim. There is no convincing evidence on record to establish this motive. Even name of said boy with whom the appellant/CICL had a quarrel, as a result of which he left the job has not come on record and he was never joined in the investigation. It has further come in the statement of Eshwar Jall PW18 that Barinder Jall son of Mahipal was also working with his father at his Dhaba. Said Barinder Jall was never joined in investigation nor cited as witness.

Prosecution has further tried to connect the appellant/CICL on the basis of recovery of a bag containing blood stained T-shirt, purse containing photograph and Aadhar Card of deceased, which was allegedly recovered on the basis of disclosure statement of the appellant/CICL. Alleged recovery, it was submitted was falsely planted on the appellant/CICL. No independent witness was joined by the police party at the time of recording of disclosure statement or at the time of effecting said recovery. Learned counsel further referred to the report of Forensic Serological Examination Ex.P38, according to which human blood group 'AB' was detected from the exhibits i.e. the clothes of the deceased victim, gauze piece, blood sample from throat, blood sample from mattress, wooden handle and weapon. There is another report of Forensic Serological Examination Report Ex.P53 pertaining to the blood sample of the appellant and half sleeve red T-shirt. As per this report, human blood was detected on exhibit 2 i.e. half sleeve red T-shirt but the result of blood group was not detected on this exhibit. The blood sample tested in the laboratory was of blood group 'B.' Therefore, T-shirt allegedly recovered on the disclosure statement of appellant/CICL could not be connected with the murder of Mahipal. It was argued that there is no direct or convincing evidence on record to connect the appellant/CICL with murder of Mahipal. It was thus prayed that judgment of conviction and order of sentence passed by the learned trial Court is not sustainable in the eyes of law and appellant/CICL deserves acquittal by accepting the present appeal.

10. Learned counsel for U.T. Chandigarh argued that facts of the case were duly proved on record from the testimony of Eshwar Jall examined as PW18. He had last seen his father at the Dhaba along with

appellant/CICL at the night of occurrence i.e. 30.06.2016 and when he returned to the room on the next day i.e. 01.07.2016, his father lay murdered with his body lying on a cot, whereas, appellant/CICL had managed to run away from there. Eshwar Jall PW18 also established the motive behind the occurrence. The appellant/CICL had a quarrel with his co-worker, as a result of which, the said worker (young boy) left the dhaba. Mahipal scolded the appellant/CICL on this count and for this reason he murdered Mahipal on the intervening night of 30.06.2016/01.07.2016. Postmortem Report of Mahipal was proved on record from the testimony of Dr. Gurdarshan Kaur examined as PW17 and Dr. Ajay Kumar, Assistant Professor examined as PW9. As per the Postmortem Report Ex.P7, there were six incised wounds on the face, neck and right shoulder of the victim and as per the opinion of Board of Doctors, it was hemorrhagic shock due to incised wound, injury no. 4, which was sufficient to cause death in ordinary course of nature. Photographs of the place of occurrence are proved by Constable Balwinder Singh PW6 which were clicked on 01.07.2016. The said photographs are Ex.P7 to Ex.P23.

Initial investigation on the spot was carried out by SI Des Raj examined as PW19 and dead body was sent for postmortem examination. HC Vinod Kumar PW11 of Mobile Forensic Team was joined in the investigation who lifted blood and other articles from the spot which were handed over to the Investigating Officer. All relevant witnesses have been examined by the prosecution. Later investigation came in the hands of SI Sukhwinder Singh examined as PW16 who along with the police party had gone to Dibrugarh, Assam and the appellant was apprehended from Gujjan (Assam) and brought back to Chandigarh on 28.08.2016. On the basis of

appellant's disclosure statement recorded on 29.08.2016 Ex.P24, a blue coloured bag was recovered near the gate of ISBT Bus Stand Sector-43, Chandigarh from which one red colour T-shirt, purse containing photographs and Aadhar card of the deceased victim were recovered and the same were taken in police possession vide separate recovery memos Ex.P25 and Ex.P26. Reports of CFSL proved on record are Ex.P38 and Ex.P39. Later on, blood sample of the appellant/CICL was obtained with the permission of the Court and it was also tested in the laboratory along with the T-shirt recovered on the basis of his disclosure statement. The said report of CFSL is Ex.P53. Therefore, testimony of Eshwar Jall PW18 coupled with recovery of aforesaid articles on the basis of disclosure statement of appellant/CICL duly connects him with the murder of Mahipal. There was no reason for the appellant to run away from the spot in case he was innocent. Learned trial Court by evaluating the evidence led in this case rightly came to the conclusion that Mahipal was murdered by his worker i.e. appellant/CICL on the intervening night of 30.06.2016/01.07.2016 who thereafter, fled from there. Therefore, charge framed against the appellant/CICL was duly proved by evidence on record and he was rightly held guilty under Section 302 of IPC. Considering the gravity of offence, the quantum of sentence imposed by the learned trial Court does not require any interference. It was submitted that appeal preferred by the appellant/CICL is without merits and the same deserves dismissal.

11. In the case in hand, FIR has been registered on the statement of Eshwar Jall complainant recorded on 01.07.2016 at 10:10 am who stated that he was working as Tubewell Operator, Tubewell Sector 42-C,

Chandigarh for the last 7-8 months. He stated that his father Mahipal and younger brother Barinder Jall aged about 25 years were running a Dhaba along with the adjoining wall of Power House of Sector 42-C, Chandigarh whereas the CICL, brought by his father from Assam about twenty (20) days prior to incident and another younger boy were working with his father. After 10/20 days of this joining the dhaba, appellant gave beatings to the younger boy who left the dhaba. Appellant was reprimanded by deceased for this reason. Occurrence took place on the intervening night of 30.06.2016/01.07.2016. CICL consumed liquor along with his father who advised him not to quarrel. CICL got angry on this count. Thereafter, they closed the Dhaba and went to sleep. When he returned to the room in the said Power House at about 06:15 am, he noticed that his father Mahipal was murdered and his body was lying on the cot. He informed the police and investigation was started. Appellant/CICL ran away from the spot along with his belongings. Complainant suspected him for the murder of Mahipal.

Appellant/CICL was charge-sheeted under Section 302 of IPC. In order to prove the charges, reliance is placed by prosecution upon sole testimony of Eshwar Jall PW18, the complainant and recovery of certain articles of deceased at the instance of appellant pursuant to his disclosure statement. Admittedly, Eshwar Jall PW18 is not an eye witness to the said occurrence. Prosecution has tried to connect the appellant/CICL with the said murder on the basis of "Last Seen" theory and circumstantial evidence. **Hon'ble the Supreme Court of India** in case title "*Aftab Ahmad Ansari versus State of Uttaranchal*", 2010(2) SCC 583 emphasized the facts and evidence which are to be considered while

dealing with the case based on circumstantial evidence. In para no. 4 of the judgment, it was held as under :-

“..... Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion howsoever strong cannot be allowed to take place of proof and, therefore, the Court has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturization of actual incident but the circumstances cannot fail. Therefore, many a times, it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface

of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.”

In the case in hand, as per statement of Eshwar Jall PW18, his duty hours were from 02:00 pm to 06:00 am. On 30.06.2016, his father allegedly consumed liquor with the appellant/CICL at about 10:00-10:30 pm. Complainant left the Dhaba after taking his meal at about 10:30 pm and the Dhaba was closed at about 11:00 pm. As per the version of complainant, he returned to the room in the morning of 01.07.2016 at about 06:15 am when he saw the dead body of his father Mahipal. There is no evidence on record as to what happened in between this period. There is a long gap of more than seven hours when the complainant Eshwar Jall PW18 saw his father alive in the company of CICL. In “***Dinesh Kumar Versus The State of Haryana***”, 2023(3) R.C.R. (Criminal) 1, it was observed in “***Nizam & anr. vs. State of Rajasthan***”, (2016) 1 SCC 550 as under :-

“where the time gap between the last seen together and the discovery of the body of the deceased was long, it was held that during this period the possibility of some other interventions could not be ruled out. Where time gap between the last seen and time of death is long enough, as in the present case, then it would be dangerous to come to the conclusion that the accused is responsible for the murder. In such cases it is unsafe to base conviction on the "last seen theory" and it would be safer to look for corroboration from other circumstance and evidence which have been adduced by the prosecution....”

It is rightly pointed out by learned counsel for the appellant/CICL that prosecution did not try to join Barinder Jall, brother of the complainant Eshwar Jall in investigation, who was admittedly working at the said Dhaba along with his father. Barinder Jall is evidently a material

witness, who would have thrown light upon the facts. There is no explanation for non-examination of this material witness. Eshwar Jall PW18 during his cross-examination conceded that he has not mentioned the name of the younger boy who was working at Dhaba along with his father. No effort was made by the Investigating Officer to join the said boy in investigation to find out the reason why he left the job. Neither is there any evidence on record to indicate much less prove that appellant physically abused any other boy working at the dhaba who had left the place as a consequent thereof. Eshwar Jall PW18 during his cross-examination admitted that no quarrel took place in his presence nor he ever reported the matter to the police. Thus an important and vital link to connect appellant with crime in question is conspicuous by its absence. Apart from this, prosecution has failed to collect any evidence on record to establish that complainant Eshwar Jall was doing private job of Tubewell Operator at Sector 42-C, Chandigarh. Therefore, the prosecution has failed to lead any evidence on record to prove the so-called motive behind this occurrence.

12. Prosecution has tried to connect the appellant/CICL with the murder of Mahipal on the basis of certain recoveries purportedly made at the instance of appellant. SI Sukhwinder Singh PW16 and recovery witness SI Alam Chand PW7 stated that police party had gone to Dibrugarh, Assam by train on 25.08.2016 and on the basis of secret information the appellant/CICL was identified and was arrested from Gujjan, District Dibrugarh (Assam). On his arrest, his transit remand was taken and was brought back to Chandigarh on 28.08.2016. During interrogation, CICL suffered disclosure statement that he had kept

concealed red colour T-shirt stained with blood, a purse containing photograph and Aadhaar Card of deceased in a blue colour cloth bag in jungle area under a stone behind back gate of Bus Stand, Sector-43, Chandigarh. Pursuant to disclosure statement dated 29.08.2016 Ex.P24, one bag containing red colour blood stained T-shirt, a purse containing photograph and Aadhar Card of deceased were recovered from the area behind the parking of bus stand at Sector-43, Chandigarh. Same were sealed in parcels and taken in possession vide separate recovery memos Ex.P25 and Ex.P26 respectively. At the time of recording disclosure statement or effecting aforesaid recoveries, no independent private witness was admittedly joined in the police party. It cannot be ignored that said recovery was effected after a period of about two months from an open area behind the parking of bus stand which is accessible to all. Thus aforesaid recovery of articles belonging to deceased is doubtful and same cannot be safely relied upon.

13. Furthermore regarding the arrest of appellant/CICL, evidence of Eshwar Jall PW18 is material. PW18 claimed in his examination-in-chief that police apprehended the appellant/CICL from ISBT Bus Stand, Sector-43, Chandigarh carrying a blue coloured bag from which red colour T-shirt, a purse and from the said purse Aadhar Card and passport size photograph of his father were recovered. Whereas, the CICL was apprehended by police party headed by SI Sukhwinder Singh PW16 from Gujjan, District Dibrugarh, Assam. Complainant further alleged that after the receipt of dead body of his father, he returned to his village in the State of Assam and thereafter, returned after one and a half month. The said blood stained T-shirt as well as blood sample of the appellant/CICL taken

with the permission of Court were sent to CFSL for the purpose of testing and the report in this regard is Ex.P53. In this report, it is mentioned that there was human blood on the said red T-shirt but the result of blood group could not be detected. This aspect when considered in the given factual matrix assumes importance.

14. SI Des Raj PW19 is the Investigating Officer who had reached the spot and conducted the investigation. HC Vinod Kumar PW11 of Mobile Forensic Team was also joined in the investigation. The blood and other articles were lifted from the spot. The weapon of offence was also lying there which was taken into police possession. SI Des Raj as PW19 admitted that no finger prints were lifted from the spot or the weapon of offence even though finger print expert was a part of the team which arrived on his calling. Therefore, another material link is missing to connect the appellant with the said crime. In case title “***R. Shaji v. State of Kerala***”, 2013(1) RCR (Criminal) 964, it was held as under :-

“...the prosecution must establish its case beyond reasonable doubt, and cannot derive any strength from the weaknesses in the defence put up by the accused. However, a false defence may be brought to notice, only to lend assurance to the Court as regards the various links in the chain of circumstantial evidence, which are in themselves complete. The circumstances on the basis of which the conclusion of guilt is to be drawn, must be fully established. The same must be of a conclusive nature, and must exclude all possible hypothesis, except the one to be proved. Facts so established must be consistent with the hypothesis of the guilt of the accused, and the chain of evidence must be complete, so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must further show, that in all probability, the said offence must have been committed by the accused.

Therefore, mere fact that appellant/CICL ran away from the spot on the day of said occurrence will not lead to the conclusion that it was he who had murdered Mahipal. Onus on the prosecution to bring on

record convincing evidence to complete the chain of events which would lead to the inescapable conclusion that Mahipal was murdered by the appellant/CICL has not been discharged.

15. Learned trial Court has failed to consider the aforesaid aspects of the present case and in our considered opinion wrongly concluded that charge framed against the appellant/CICL under Section 302 of IPC was proved on the basis of evidence on record. It was duty of prosecution to bring home the guilt of appellant/CICL beyond the shadow of reasonable doubt which the prosecution has failed. Therefore, in our opinion, judgment of conviction dated 30.07.2020 and order of sentence dated 05.08.2020 passed by learned Additional Sessions Judge, Chandigarh (Exercising powers of Children's Court) is not sustainable. Same is accordingly, set aside. Resultantly, appeal preferred by the appellant/CICL is accepted and he is acquitted of the charge framed against him by giving him the benefit of doubt. Appellant is directed to be released from custody forthwith, if not required in any other case.

Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

February 20, 2024
lalit

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