

In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-218-DB-2005
Reserved on: 16.12.2024
Date of Decision: 18.01.2025

Rajesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent
2.

CRA-D-275-DB-2005

Kamlesh

.....Appellant

Versus

State of Haryana

.....Respondent
3.

CRA-D-331-DB-2005

Sanjay Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Ms. Nisha Rana, Advocate
for the appellants (in CRA-D-218-DB-2005
& CRA-D-331-DB-2005)

Mr. Prashant Singh Chauhan, Advocate
for the appellant (in CRA-D-275-DB-2005).

Mr. Pawan Girdhar, Addl. A.G. Haryana.

SURESHWAR THAKUR, J.

1. Since all the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence all the appeals (supra) are amenable for a common verdict being made thereons.

2. All the appeals (supra) are directed against the impugned verdict, as made on 25.02.2005, upon Sessions Case No.37 of 2004, by the learned Additional Sessions Judge, Gurgaon, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 302/201/120-B of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts. Moreover, through a separate sentencing order of 28.02.2005, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner:

“xxx

So, all the three convicts are sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each for the offence under Section 120-B IPC. In default of payment of fine, the defaulter would undergo further R.I. for two months. Convicts Sanjay Kumar and Rajesh Kumar are further sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each under Section 302 IPC. In default of payment of fine, the defaulter would undergo further R.I. for two months. The accused Sanjay Kumar and Rajesh Kumar are also sentenced to undergo R.I. for two years and to pay a fine of Rs.200/- each under Section 201 IPC. In default of payment of fine, the defaulter would further undergo R.I. for one month.”

3. All the sentences 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 convicts.

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 their respective criminal appeals.

Factual Background and investigation

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PD is assigned. The narrations carried in Ex.PD are, that on 22.03.2004, ruqa was received from Station Superintendent Northern Railway, Gurgaon in the police post GRP, Gurgaon mentioning therein that Mewa Lal, Gateman had given an information at 7.05 a.m. to the effect that a person was lying dead having a rope around his neck at Kilometer No.33/6 of broad gauge, Railway Line. On this, ASI Sube Singh, along with other police officials reached KM No.33/5-6 between Railway Stations Gurgaon and Basai-Dhankot. Thereafter, on information, Dinesh Kumar SI the then SHO GRP Rewari reached the spot and conducted the proceedings under Section 174 Cr.P.C. Since the name and identity of the deceased could not be ascertained nor any witness was available, therefore, the dead body was sent for post mortem through ASI Jaibir Singh on that very day i.e. 22.03.2004. On 23.03.2004, S.I. Dinesh Kumar along with the police officials reached G.H. Gurgaon where ASI Jaibir Singh produced the post mortem report in which it was mentioned that the death in the case was due to asphyxia caused on account of legative strangulation and that the injuries on the body were post mortem in nature. The Investigating Officer also came to the conclusion that the dead body was thrown on the railway track in order to destroy the evidence regarding the murder. On this basis of these facts, the case under Sections 302/201 IPC was registered.

6. Since the whereabouts of the dead body could not be known and considering to be that of a Muslim, the same was buried on 25.03.2004 by Molvi Tyyub. Anyhow, Dharampal and his brother Shish Ram approached GRP Police, Rewari on 29.03.2004 and on their asking, the dead body was got exhumed which was identified by them to be of their brother Balwan Singh. Dharampal and Shish Ram had suspected that their brother Balwan had been murdered by Sanjay, Rajesh and wife of Balwan namely Kamlesh as Sanjay and Rajesh were having illicit relations with her (Kamlesh). On these allegations, the accused were arrested and after completion of investigation, the challan was submitted in the Court.

Committal Proceedings

7. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned Committal Court concerned, through making a committal order, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences respectively punishable under Sections 302/34 and 201/34 besides under Section 120-B of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 14 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 lead two witnesses in their defence evidence.

Submissions of the learned counsel for the appellants-convicts

10. The learned counsels for the aggrieved convicts-appellants have argued before this Court, that the impugned verdict of conviction, and, 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. To support the said submission, he argues that since in the FIR the names of the accused were not recorded, thereby the inculcation drawn against the accused is unmeritworthy.

Submissions of the learned State counsel

11. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, the 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 appeals, as preferred by the convicts-appellants, be dismissed.

CIRCUMSTANTIAL EVIDENCE BASED CASE, BASED ON THEORY OF LAST SEEN PROPAGATED BY PW-2 and PW-3, THE SAID PROPAGATION IS THE INITIAL/PRIMARY LINK IN THE CHAIN OF INCRIMINATORY CIRCUMSTANCES AS ERECTED BY THE PROSECUTION AGAINST THE ACCUSED

12. The theory of last seeing together of the accused and the deceased, becomes propagated by PW-2 and PW-3. PW-2 in his examination-in-chief has echoed that he is running a shop of tailoring at village Jaisinghpur Khara. On 21.3.2004 he visited Gurgaon at Rajindera

Park to meet Ram Prashad who is also a resident of his village. He further echoed that when he came to railway station, Gurgaon at about 7:30 p.m., that then he saw deceased Balwan, together along with the two persons who were present in the Court, one of the said persons became identified as Sanjay, whereas, he revealed that he did not know about the name of the other person, but also identified him. He continued to testify that then though he asked deceased Balwan to return to the village but Sanjay accused asked him that his friend is residing here and he has come here to take money from him. In the meantime, he testifies that he left the station. After six days, he then came to know about the missing of deceased Balwan. Thereafter, he told the mother of deceased Balwan, that Balwan had met him at Gurgaon Railway Station, on 21.3.2004, thus along with Sanjay and another person.

13. PW-3 in his examination-in-chief has echoed that on 21.3.2004 he went to see his sister at village Jhiwana. At about 3:00 p.m., he saw his brother Balwan, and two accused Sanjay and Rajesh going towards the street. Since therebys a suspicion got aroused thereupon, he queried his brother about the place where he was going, whereupon accused Sanjay and Rajesh intimated him that they were going to Gurgaon to seek the releases of gold ornaments, thus pledged with the goldsmith. He further echoes that accused Kamlesh was standing outside the gate of her house. In addition, he testifies that he also asked them as to where they would stay, whereupons they replied that they would stay with one of their friend at Gurgaon, whereafter he states that he returned home, but after four days, he came to know that his brother Balwan was missing from his house.

14. Therefore, on the above made echoings in their respective examination(s)-in-chief, thus by PW-2 and by PW-3, the prosecution has

erected the incriminatory link qua theirs' last seeing together the accused and the deceased.

15. The above witnesses were 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 them, in their examination(s)-in-chief, rather were either false, contrived or concocted. Therefore, naturally immense evidentiary credit, is to be assigned to the testifications of PW-2 and PW-3. Resultantly, an inference is garnered, that the accused and the deceased were last seen together by PW-2 and PW-3.

16. Moreover, when PW-2 and PW-3 in their previously recorded statement in writing to the police office concerned, thus therein named the accused with specificity. Moreover, when upon the accused making their respective appearances, before the learned trial Judge concerned, the said witnesses also identified them to be the persons, they had named in their respectively made previous statements in writing. Resultantly, therebys when both the (supra) previously made statement in writing by the witnesses (supra), and the respective identifications made by them, in Court vis-a-vis the accused, thus but obviously are in inter se alignment. In sequel, when the said evidence remains un rebutted, especially since therebys the witnesses (supra) were previously known to the accused, therebys there was no necessity for conducting any test identification parade, during the course of investigations being made in the present FIR by the investigating officer concerned, nor the subsequent thereto respective apposite identifications made in Court by the witnesses (supra) rather loose their evidentiary value.

of last seen together of the accused and the deceased in proximity of the crime event taking place but fosters a conclusion that as such the prosecution has invincingly proven the charge against the accused.

**EXTRA JUDICIAL CONFESSION MADE BY THE ACCUSED
BEFORE PW-1**

17. The makings of an extra judicial confession by the accused, before PW-1, 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 Rajesh and Sanjay to PW-1, thus before PW-1, thus obviously led the PW (supra), to step into the witness box. In his deposition as comprised in his examination-in-chief, he testified that on 01.04.2004, when PW-1 (supra), along with Roop Ram Lamberdar were present at Bus Stand Rewari, then accused Rajesh and Sanjay came there and met them. PW-1 (supra) also deposed therein, that both the accused unfolded to them, that when he enquired about deceased Balwan from them, thereupon they told him that they have murdered him, on account of the accused Sanjay and Rajesh having illicit relations rather for the last four to five months, thus with accused Kamlesh. Furthermore he further testified that therein they also confessed that they had murdered deceased Balwan Singh near village Dhankot Basai by strangulating him, with a rope and had thrown the dead body of Balwan Singh on the railway track. He further testified that he along with Roop Ram took both the accused at GRP, Rewari, at about 1:00 p.m., where both the accused again re-confessed their guilt before the police also.

18. Though, the said witness became subjected to the ordeal, of an exacting cross-examination, but no elicitations were made from him by the

learned defence counsel, wherefrom any inference could become mobilized, that he has either wilted under or succumbed, to the exacting cross-examination as became made upon him, nor a closest reading of his cross-examination thus discloses, that thereins he denied all the above speakings, as became made by him, in his examination-in-chief. Resultantly, therebys he has rendered a testification, thus with the completest *inter se* corroboration rather in respect of the above makings of an extra judicial confessions before PW-1, hence by the accused. Therefore, the said incriminatory link in the chain of circumstance, did also become invincingly proven by the prosecution.

19. Since the investigating officer also supported, the deposition of PW-1, as relates to his along with Roop Ram producing the accused, before the police. Therefore, besides conspicuously, when there is no suggestion made to PW-1 or to the investigating officer concerned, thus revealing, that the present appellants were not on friendly terms, with PW-1, so as to disable the appellants to make an incriminatory extra judicial confession, thus before PW-1, about their participation in the crime event. In sequel, the extra judicial confession as made by the present appellants to PW-1, thus can be stated to be made to a person/persons in whom the present appellants reposed deep trust and confidence, wherebys it acquires immense evidentiary vigor.

MEDICAL EVIDENCE (POST MORTEM REPORT)

20. The autopsy upon the body of deceased Balwan Singh was conducted on 23.03.2004 by PW-12 along with Dr. B.B. Aggarwal. PW-12 has proven *qua* his, authoring Ex.PL, as relates to the autopsy as made upon the body of deceased.

21. Moreover, he has also proven that the cause of death of deceased Balwan Singh, arose from asphyxia caused by ligature strangulation. All the injuries were declared to be post mortem in nature. The relevant ante mortem injuries as noticed by PW-12 on the body of deceased are extracted hereinafter.

- “1. The face and anterior part of skull was missing. Only some part of chin with muscles and occipital bone was present. Brain matter was absent from cranial cavity. Parts of the brain matter and pieces of skull bone presented separately in a cloth.*
- 2. There were contusions over both shoulders anteriorly of size 3x2 cm.*
- 3. There was contusion over right knee.*
- 4. Multiple contusions all over the body.”*

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

23. Since this Court has also assigned creditworthiness to the testifications of the witnesses' (supra) who respectively have well propagated the theory of last seen together and have also proven the able makings of an efficacious incriminatory extra judicial confession, thereby the lack of makings of a disclosure statement(s) and also the lack of makings of any consequent thereto recoveries, thus become(s) completely inconsequential.

24. Additionally, also when the makings of the incriminatory extra judicial confession by the accused before PW-1, wherein, they echoed that they had strangled the deceased, thus also becomes supported by the (supra) medical evidence adduced by the prosecution.

25. In nutshell, there is no infirmity or perversity in the findings, as made by the learned trial Judge concerned.

FINAL ORDER

26. In consequence, the impugned verdict of conviction, and, also theconsequent 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.

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

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 18, 2025
Ithlesh

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