

## **Smt. Manju alias Sapna, Surinder Kumar alias S.K. alias Bhura, Addl. Advocate General, Haryana Vs State of Haryana**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 25, 2007

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 41  
Penal Code, 1860 (IPC) â€” Section 120B, 149, 201, 302, 34

**Citation:** (2008) 1 RCR(Criminal) 16

**Hon'ble Judges:** Nawab Singh, J; Mehtab S. Gill, J

**Bench:** Division Bench

**Advocate:** Rita Suri in Criminal Appeal No. 942-DB of 2004 and Mr. D.K. Khanna in Criminal Appeal No. 155-DB of 2005, for the Appellant; Kulvir Narwal, A.A.G., Haryana, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Nawab Singh, J.

1. This judgment disposes of above two criminal appeals bearing Nos. 942-DB of 2004 and 155-DB of 2005, as both these appeals have arisen

from a common judgment and order dated October 7, 2004 and October 8, 2004 respectively passed by learned Additional Sessions Judge,

Ambala.

2. Criminal Appeal No. 942-DB of 2004 has been filed by Smt. Manju alias Sapna accused-Appellant and Criminal Appeal No. 155-DB of

2005 has been filed by Surinder Kumar alias S.K. alias Bhura accused-Appellant against the judgment and order dated October 7, 2004 and

October 8, 2004 respectively passed by Additional Sessions Judge, whereby both of them were convicted for the offence punishable u/s 302 of

the Indian Penal Code (for short "IPC") and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 200/- each. In default of

payment of fine, the Appellants were directed to further undergo rigorous imprisonment for one month each.

3. The factual scenario as highlighted by the prosecution is as follows:

Joginder Singh (since deceased) was a property dealer running the business in the name and style of Heera Property Dealer, Mahesh Nagar,

Ambala Cantt. On May 22, 1999 at 5.00 p.m., a male accompanied by a female along with a child came in a car at his office. Smt. Avinash Kaur

wife of Joginder Singh (PW-21) was also present at that time. After some time, Ashok Gulati (PW-17) also came at the shop of Joginder Singh.

All of them talked for a little while. At about 6/6.30 p.m. Joginder Singh left with the said male and female in their car. Ashok Gulati (PW-17)

followed them on his scooter. When Joginder Singh did not return to his house upto 10.30 p.m. his wife Avinash Kaur (PW- 21) took the

telephone number of Ashok Gulati (PW-17) from Sardar Baldev Singh, another property dealer. She rang up Ashok Gulati (PW-17). Ashok

Gulati's wife picked up the telephone and informed that Ashok Gulati had not come to the house. Avinash Kaur (PW-21) told her that her

husband had gone with Ashok Gulati, but did not return and as and when Ashok Gulati comes to the house tell him to talk to her. She did not

receive any telephone call from Ashok Gulati. At 12 mid night, she again rang up the house of Ashok Gulati. Ashok Gulati's wife picked up the

telephone and informed her that three or four persons came in a car and left Ashok Gulati at the house and he was sleeping. She (Avinash Kaur)

(PW-21) told the wife of Ashok Gulati to awake Ashok Gulati as she wanted to talk to him. In the meantime, the telephone (got) disconnected.

Avinash Kaur (PW-21) also rang up her relations residing at Krishna Nagar and Durga Nagar, Ambala Cantt., but she could not find the

whereabouts of her husband. Next morning at about 6/6.30, she again rang up Ashok Gulati (PW-17), who informed her that he would be

reaching her house at the earliest. After some time Ashok Gulati (PW-17) reached the house of Avinash Kaur (PW-21). Ashok Gulati tried to find

out the address and telephone numbers of some persons residing at Ambala City because the female and the male, who came previous evening,

were residents of House No. 998, Sector No. 9 Ambala City, but could not find the address and telephone number of those persons. Ashok

Gulati asked her to wait upto 9/10 a.m. because those persons were to execute an agreement and to get the same executed, they would certainly

come. Thereafter, Ashok Gulati went away. At about 9 a.m., she received a telephone call from her nephew Jasbir Singh. Jasbir Singh called her

at his house. She along with her children went to the house of Jasbir Singh. On reaching the house of Jasbir Singh, she was informed that Joginder

Singh's dead body was lying in the Military Ground, Ambala Cantt. On coming to know of it, she reached the Military Ground, Ambala Cantt. and

identified the dead body of her husband Joginder Singh. She then made a statement (Exhibit PF) to Surjit Kumar, Station House Officer, Police

Station Mahesh Nagar, Ambala Cantt. (for short `SHO") (PW-27), which led to the registration of First Information Report (for short `FIR")

(Exhibit PG) under Sections 302 and 201 read with Section 34 IPC at Police Station Mahesh Nagar, Ambala Cantt. She suspected that her

husband had been killed by the persons, who came at his shop the preceding evening. She also suspected that those persons were sent by Gurpal

Singh alias Pala's brother-in-law Nirbhey Singh and brother Surinder Singh alias Chhinda, because Nirbhey Singh had a dispute with her husband

over a plot. Civil as well as criminal litigation was pending between her husband and Nirbhey Singh.

4. Inquest proceedings were conducted and spot was inspected by Surjit Kumar Inspector (PW-27). Rough site plan (Exhibit PZ) was prepared.

Blood stained Shawl of black colour, with which the dead body was tied, blood stained underwear and a letter were taken into possession vide

seizure memorandum (Exhibit PB). The dead body was sent for post-mortem examination at Civil Hospital, Ambala Cantt. After post-mortem

examination, the clothes of the deceased were also taken into possession vide seizure memorandum (Exhibit PC).

5. On May 24, 1999, Sohan Lal (PW-1) reached Police Station Mahesh Nagar, Ambala Cantt. He joined the investigation of the case. He led the

police party to House No. 998, Sector 9, Ambala City. On reaching the said house, Surjit Singh Inspector (PW-27) took into possession dried

blood stains and hairs by scrapping from the floor, blood stained hair pin, three pieces of plastic cord stained with blood on one side, one bed

sheet, one mattress, eighteen cigarette butts, two Biri butts and empty card board box of cartridges of .32 bore, two empty cigarette packets and

one sketch pen of orange colour vide seizure memorandum (Exhibit PAA). On June 2, 1999 accused Gurpal Singh, Surinder Singh and Nirbhay

Singh were arrested u/s 120-B IPC and one Ashok Kumar u/s 41 Code of Criminal Procedure on suspicion. On June 14, 1999 Surjit Kumar

Inspector (PW-27) received a telephonic message from Hardev Singh Inspector, CIA Staff, Ludhiana (PW-19) that Ravinder Kumar, Darshan

Singh, Surinder Kumar and Manju connected with this case had been arrested by him in a case registered under the NDPS Act. On receipt of the

message, Surjit Kumar Inspector (PW-27), reached Ludhiana and arrested the accused in the present case.

6. On completion of investigation and other formalities, the accused were arraigned for trial.

7. Charge, in respect of commission of offences punishable under Sections 120-B, 302 read with Section 120-B IPC, 201, 395 and 343 read

with Section 149 IPC, was framed against the accused. They pleaded not guilty and claimed trial.

8. In support of its case, prosecution examined twenty eight witnesses in all viz. Sohan Lal (PW-1), Jasbir Singh (PW-2), Santokh Singh (PW-3),

Jagjit Singh (PW-4), Jai Bhagwan Moharrir Head Constable (PW-5), Dalip Singh (PW-6), Jagdish Chander (PW-7), Nar Singh, Finger Print

Expert (PW-8), Nar Singh SI (PW-9), Mahabir Singh (PW-10), Manohar Lal Constable (PW-11), Chamel Singh Head Constable (PW-12),

Jasbir Singh Head Constable (PW-13), Ram Kumar (PW- 14), Shiv Ram (PW-15), Dr. Satish Panwar (PW-16), Ashok Kumar (PW-17),

Rachhpal Singh Head Constable (PW-18), Hardev Singh (PW-19), Parminder Singh ASI (PW-20), Avinash Kaur (PW-21), Ram Singh (PW-

22), Dalip Singh SI (PW-23), Jaswinder Singh SI (PW-24), Dilbagh Singh SI (PW-25), Ramesh Singh Criminal Ahlmad (PW-26), Surjit Kumar

Inspector (PW-27) and Dr. Gulshan Rai (PW-28).

9. In their examination recorded u/s 313 of the Code of Criminal Procedure (for short `Cr.P.C.") the accused denied the allegations and pleaded

that they were implicated falsely.

10. Out of the six accused, Ravinder Kumar alias Dr. Bobby, Darshan Singh alias Arjun, Dharamvir alias Rakesh and Surinder Singh alias Chhinda

were acquitted and Smt. Manju alias Sapna and Surinder Kumar alias S.K. alias Bhura accused-Appellants have been convicted and sentenced as

spelt out in para 2 of this judgment.

11. The prosecution has relied upon only one piece of evidence against the accused-Appellants to prove their guilt that Smt. Avinash Kaur (PW-

21) wife of Joginder Singh (since deceased) had last seen her husband in the company of the accused-Appellants.

12. Evidence of `last seen" of the deceased in the company of the accused- Appellants is comprised in the statement of Smt. Avinash Kaur (PW-

21). Per her, on May 22, 1999, the accused-Appellants came at the shop of Joginder Singh at 5 p.m. They talked for a little while. Ashok Gulati

(PW-17) also reached the shop. Thereafter, her husband and accused-Appellants left the shop in the car and Ashok Gulati followed them on his

scooter. Ashok Gulati (PW-17) did not support the prosecution case. He has categorically stated that he did not go to the shop of Joginder Singh

deceased on May 22, 1999, so question of his following the deceased and the Appellants did not arise.

13. As would be clear, the prosecution case is based on circumstantial evidence. There is no eye-witness available.

14. In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt

of the accused-Appellants. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases

of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their

application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt,

if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other

reasonable hypothesis as has been ruled by the Hon"ble Supreme Court in India in Shankarlal Gyarsilal Dixit v. State of Maharashtra, 1981

Criminal Law Journal 325.

15. Adverting to the statement of Avinash Kaur (PW-21), it is shaky and is not believable. It is an established fact that the accused-Appellants

were not known to Avinash Kaur (PW-21). The only statement made by her was that a male accompanied by a female and a child had come to

their shop on May 22, 1999 and her husband left the shop with them. Names or other particulars of the persons, that is, the male, the female and

the child were not known to Avinash Kaur (PW-21), she never mentioned their description sufficient to establish their identity and no test

identification was held.

16. If for the sake of argument, the statement of Avinash Kaur (PW-21) is taken to be correct, still it is not possible to hold that the said male and

female were none else than the accused-Appellants. To support her evidence, the prosecution relied upon Ashok Gulati (PW-17), but he did not

support the prosecution case. There is no other evidence on record to connect the accused-Appellants with the alleged commission of offence,

except the evidence of last seen. The theory of last seen comes into play where time gap between the point of time when the accused and the

deceased were seen last alive and when the deceased was found dead is so small that possibility of any person other than the accused being the

author of the crime becomes improbable. It would be difficult in some cases to positively establish that the deceased was last seen with the

accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to

conclude that the accused and the deceased were last seen together, it is hazardous to come to a conclusion of guilt against the accused. Thus, the

prosecution evidence falls woefully short of connecting the accused-Appellants with the crime. It needs to be added here that in a case dependent

on circumstantial evidence, a complete chain of circumstances is required. One circumstance would be just one knot but not a complete chain of

circumstances.

17. Learned trial Judge fell in error when he held the accused-Appellants guilty and convicted them. There was no sufficient or reliable evidence to

bring the guilt home.

18. For the reasons aforesaid, both the appeals are accepted. As a result thereof, the conviction and sentence passed by learned trial Judge is set

aside. Consequently, the accused-Appellants are acquitted of the charges, under which, they were convicted and they be set at liberty forthwith, if

not required in any other case.

19. Before parting with the judgment, this Court cannot help observing that imposing a fine of Rs. 200/- as part of sentence in a case of murder is

not proper. The amount of Rs. 200/- is too meagre bordering on making the mockery of the mandatory requirement of imposition of fine. The

amount of fine must be commensurate with the gravity of the offence proved.