

(2010) 05 P&H CK 0135

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Asrudin @ Hasrudin @ Raju and
Shambhu Sharma

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: May 3, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: Mehtab S. Gill, J; Arvind Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment/order dated 14.12.2006 of the Additional Sessions Judge, Patiala vide which he convicted Asrudin @ Hasrudin @ Raju son of Farzul and Shambhu Sharma son of Jyoti Sharma u/s 302 IPC and sentenced them both to undergo life imprisonment, further to pay a fine of Rs. 2,500/- each, in default of payment of fine to undergo three months rigorous imprisonment. Both accused Asrudin @ Hasrudin @ Raju son of Farzul and Shambhu Sharma son of Jyoti Sharma were also convicted and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for two months each u/s 201 readwith Section 34 IPC. Accused Bahadur @ Mohd. Hussain and Daikua did not face trial and were declared Proclaimed Offenders by the learned trial Court.

2. The case of the prosecution is unfolded by the statement Ex.PB of Mukhtiar Singh PW3 given to Satnam Singh SI PW8 at Police Station Sadar Patiala. Mukhtiar Singh stated that he is a resident of village Kherki. Mukhtiar Singh stated he is in cultivation of nine and half acres of land belonging to the Wakf Board. This land is

on lease with him for some time. He had a servant by the name of Nepali Bhaiya Vijay @ Birju, resident of Nepal who used to stay in the room on the land. At night, he used to sleep in the room in which the motor was installed. He did his cooking of food also there. On 3.7.2004, at about 12 O'clock in the day, Mukhtiar Singh went to his village after irrigating the paddy fields. On 5.7.2004, at about 6 am, he came to his fields. He did not see his servant Vijay @ Birju there. Nor did he see Vijay's CD Player and the box of speaker. Harjit Singh @ Kaka, Gopal Singh @ Pala and Harbans Singh who were living in his neighborhood met him and he told them about missing of his servant. Harbans Singh then stated, that on the intervening night of 3/4.7.2004, in the morning at 3:30 am, four bhaiyas, one of them named as Raju, the servant of Pala Singh @ Gopal Singh with whom were three other persons he saw there. He could identify the three persons as they used to come many times to the room of Raju. Out of them one tall person had a CD Player and a box containing a Speaker on his head. They were going towards the motor of Pala Singh. Then he saw in the water khal that fresh earth had been dug in the khal. Thereupon Mukhtiar Singh with the others dug the earth and they found the dead body of Vijay @ Birju lying there. There were sharp edged injury marks on the mouth, chin and forehead of Birju. Blood was oozing out. Mukhtiar Singh PW3 was convinced that Vijay @ Birju had been murdered by Raju whose appearance was about 19 years of age, hair cut, colour was black, his height was more than 5" alongwith Shambhu Sharma whose appearance was aged about 21/22 years, hair were cut, height was about 5" and Daikua whose appearance was about 22 years, haircut, dark complexion, height about 5" and Bahadur whose appearance was about 20 years, height more than 5", dark complexion. The motive for the commission of the offence was the stole CD Player and Speaker, thus, they killed Vijay @ Birju with sharp edged weapon. On the basis of the statement, FIR Ex.PB/2 was recorded on 5.7.2004 at 5 pm and the special report reached the Duty Magistrate on the same day at 10:30 pm.

3. The prosecution to prove its case, brought into the witness box Harjit Singh PW1, C Harnek Chand PW2, Mukhtiar Singh PW3, MHC Balwant Singh PW4, Dr. Harkirat Singh PW5, Bakshish Singh PW6, HC Bhupinder Singh PW7 and SI Satnam Singh PW8. In his statement u/s 313 Cr.P.C., the accused pleaded innocence. The accused led no evidence.

4. Learned Counsel for the appellants has argued that the recovery of the dead body was from the khal (water channel) next to the fields of Mukhtiar Singh as stated by Mukhtiar Singh PW3, who was the employer of the deceased. Bakshish Singh PW6 who took the photographs Ex.P2 to Ex.P16 has stated that the dead body was lying in the fields of Mukhtiar Singh PW3. The inquest report also states that the dead body of deceased was lying in the fields of Mukhtiar Singh PW3.

5. There is no proof on record that Mukhtiar Singh PW3 was cultivating nine and half acres of land belonging to the Wakf Board. No documents have been put on record of the crop which had been sown or sold by Mukhtiar Singh PW3. Spade Ex.P1

recovered from the tubewell / kotha of Mukhtiar Singh PW3 as per the disclosure statement of appellant Asrudin @ Hasrudin does not have any blood stains on it. Similarly Kulhari Ex.P2 recovered from appellant Shambhu though has blood stains but it does not match with the blood of the deceased.

6. There is an unexplained delay in lodging of the FIR. Occurrence had taken place on 3/4.7.2004 in the night at about 3:30 am. While FIR Ex.PB/2 was recorded on 5.7.2004 at 5 pm.

7. As per Dr. Harkirat Singh PW5, who prepared the post mortem report Ex.PF, the body was in a decomposed state but strangely Mukhtiar Singh PW3 has stated that when the body was brought, blood was oozing out of the injuries.

8. The last seen evidence as propounded by Harjit Singh PW1 does not inspire confidence. As per FIR Ex.PB/2, it was Harbans Singh, the prosecution witness, who has not been produced, who told Mukhtiar Singh PW3 that he has seen four persons going away from the room of the deceased, one of them was a tall person carrying a CD Player. Harbans Singh was given up as having been won over and was not produced by the prosecution. Harjit Singh PW1 came into the witness box but he does not corroborate the version given in FIR Ex.PB/2. Motive as put forth by the prosecution is false. No one would commit a murder to steal a CD Player and a Speaker.

9. Learned Counsel for the State has argued that Mukhtiar Singh PW3 employed deceased Vijay @ Birju. He had taken nine and half acres of land from the Wakf Board. There was a room constructed on this land where Vijay @ Birju (deceased) stayed and looked after the work of complainant Mukhtiar Singh PW3. Mukhtiar Singh PW3 after irrigating his paddy crop went to his village Hari Nagar Kherki. On 5.7.2004 at about 6 am, when he came back, he could not find his employee. CD Player alongwith the Speaker was also missing. It is thereafter that he met Harjit Singh PW1, Gopal Singh and Harbans Singh and both Harbans Singh and Harjit Singh PW1 told him that on the intervening night of 3/4.7.2004 at about 3:30 am, they saw Gopal Singh @ Pala, Shambhu, Daikua going towards the tubewell of Gopal Singh @ Pala. They were carrying a CD Player and Speaker. Harjit Singh PW1 came into the witness box and narrated this version on oath. They looked for Vijay @ Birju and after digging the earth near his tubewell, they found the body of the deceased. There is no delay in lodging of the FIR. The last seen evidence coupled with the evidence of recovery of spade Ex.P1 and Kulhari Ex.P2 on the statement of the appellants proves the guilt of the accused.

10. We have heard learned Counsel for the parties and perused the record with their assistance.

11. Testimony of Harjit Singh PW1 in Court is that on 3/4.7.2004, he was irrigating his fields at about 3:30 am, he saw four persons going towards the tubewell of Gopal from the tubewell of Mukhtiar Singh PW3. He identified them as being Raju,

Shambhu, Daikua (P.O) and Bhadur (P.O). He has stated that he knew them as they used to come to see Vijay Kumar, the servant of Mukhtiar Singh PW3. He identified both appellants Shambhu and Raju in Court also. He also stated that at that time Shambhu was carrying a CD Player belonging to Vijay (deceased). There was electric light which was on. He inquired from them as to from where they had come. They replied that they had cultivated the paddy crop and were going to rejoin the party. On 5.7.2004 when Mukhtiar Singh came back, he saw that Vijay was not in his room. Harjit Singh PW1 alongwith Mukhtiar Singh PW3 then searched for Vijay and they saw that near the tubewell of Mukhtiar Singh PW3, there was fresh earth. They dug that place and found the body of Vijay @ Birju lying about 6 feet in the earth. Testimony of this witness goes unshattered in his cross examination. His testimony inspires confidence.

12. Statement of Mukhtiar Singh PW3 also inspires confidence. He has stated that he employed Vijay @ Birju Nepali labourer, who used to stay in a room of his tubewell. On 5.7.2004 when he came back, he could not find Vijay @ Birju and it is thereafter then Harbans Singh and Harjit Singh PW1 told him about the appellants Asrudin and Shambhu having taken the CD Player and the speaker. Accused Bahadur (P.O) and Diakua (P.O) were alongwith him.

13. As per the statement of SI Satnam Singh, PW8, the Investigating Officer, appellants were arrested from the railway station and were trying to board a train. At that time, appellant Shambhu was carrying a CD Player in his right hand. This was the one which belonged to deceased Vijay. CD Player was taken into possession vide memo Ex.PO. Appellant Asrudin was interrogated and as per his disclosure statement spade, Ex.P1 was recovered vide memo Ex.PW. Appellant Shambhu was interrogated and as per his disclosure statement he stated that Kulhari (axe) Ex.P2 was concealed in the tubewell room of Gopal Singh @ Pala. His disclosure statement Ex.PT was recorded and thereafter Kulhari was recovered which had stains of blood on it.

14. There is no delay in lodging of the FIR. The delay, if any, has been explained by the prosecution as Mukhtiar Singh PW3 after irrigating his fields in the night of 3/4.7.2004 had left for his village Hari Nagar Kherki which was about 30 kms away. It was on 5.7.2004 when he came back, he saw that Vijay @ Birju was missing.

15. Taking the evidence in totality, it is clear that both the appellants namely Asrudin @ Hasrudin @ Raju and Shambhu committed the murder of Vijay @ Birju.

16. We do not find any infirmity in the judgment of the learned trial Court.

17. Appeal is dismissed.