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# Pawan Mandal and Another Vs State of Punjab

## Criminal Appeal No. 41-DB of 2004

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

**Date of Decision:** Oct. 30, 2009

**Acts Referred:**
Penal Code, 1860 (IPC) â€" Section 302, 34

**Citation:** (2009) 32 CriminalCC 553 : (2010) 1 RCR(Criminal) 273

**Hon'ble Judges:** Jasbir Singh, J; Daya Chaudhary, J

**Bench:** Division Bench

**Advocate:** Sumanjit Kaur, for the Appellant; D.S. Brar, DAG, Punjab, for the Respondent-State, for the Respondent

**Final Decision:** Allowed

## Judgement

Daya Chaudhary, J.
The present appeal arises out of judgment of conviction and order of sentence dated 21.10.2003 passed by Sessions

Judge, Amritsar, in Sessions Case No. 109 of 2000, vide which accused-appellants Pawan Mandal and Bhairo Mandal have been convicted for

offence under Sections 302 read with Section 34 IPC and 201 IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.

1000/- each and in default of payment of fine to further undergo RI for six months u/s 302 read with Section 34 IPC. u/s 201 IPC, to undergo RI

for two years and to pay fine of Rs.500/- each and in default of payment thereof, to further undergo RI for two months. The substantive sentences

were directed to run concurrently.

2. Briefly, the facts of the prosecution case are that FIR was registered on the basis of statement made by Chalahe Mandal, the father of deceased

Anil Mandal, by stating that he is resident of District Bhagalpur (Bihar) and is having two issues i.e. Anil Mandal (son) and Dhanoka Devi

(daughter) and both were married. He and his son Anil Mandal are living in a rented room in Gujjarpura Street No.2, Guru Gobind Singh Nagar.

He is beggar and his son Anil Mandal is earning his livelihood by pulling a rickshaw. On 23.03.2000 he went to his native village and his son Anil

Mandal was in Amritsar. On 23.03.2000, he received an information from Vinod Yadav resident of village Bhaturia on telephone that he (Vinod

Yadav), Anil Mandal and Dinesh went to play Holi to the house of Pawan Mandal, resident of village Nawada (Bihar) where Bhairo Mandal,

father-in-law of Pawan Mandal, was already there and after taking food, he (Vinod Yadav) slept in the room of Pawan Mandal, whereas Dinesh

Yadav, Pawan Mandal and Bhairo Mandal took Anil Mandal along with them to the room of Bhairo Mandal at Chawla Poultry Farm. When he

woke up in the morning, he was told by Pawan Mandal, Bhairo Mandal and Dinesh Yadav that Anil Mandal had left that place in the night itself.

He (Vinod Yadav) tried to locate Anil Mandal at his residence and other places, but no clue about him could be found. On receipt of this

information, Chalahe Mandal reached Amritsar on 29.03.2000 and met Vinod Yadav and tried to find out his son Anil Mandal, but he could not

be searched out. He was fully convinced that Bhairo Mandal, Pawan Mandal and Dinesh Yadav had abducted his son with intention to kill him. It

was further stated by Chalahe Mandal that when his son was residing in his native village, a rickshaw was given to Sudama Mandal, brother of

Bhairo Mandal, on rent from Manoj of Bhagalpur (Bihar). Later on, Sudama Mandal shifted to Punjab and rickshaw was sold. Anil Mandal

recovered the amount of Rs.5000/- on account of that rickshaw from Bhairo Mandal on coming to Amritsar and that amount was sent to Manoj in

Bihar. Because of that grudge, Pawan Mandal, Bhairo Mandal and Dinesh Yadav had abducted Anil Mandal with intention to kill him. On the

basis of the statement Ex.PG made to ASI Balbir Singh, a formal FIR Ex.PG/2 was recorded by ASI Dalbir Singh.

3. ASI Balbir Singh went to the place of occurrence and prepared rough site plan. Investigation of the case was thereafter conducted by Sub

Inspector Narinder Singh. Pawan Mandal was arrested on 30.03.2000 and interrogated in the presence of ASI Balbir Singh, who made a

disclosure statement and told regarding concealment of the dead body of Anil Mandal after putting it into a gunny bag in a deserted well at the

backside of Chawla Poultry Farm with the help of Bhairo Mandal and Dinesh Yadav, after committing murder with their help. Statement of Pawan

Mandal Ex.PH was recorded which was thumb-marked by him and attested by Vinod Kumar and ASI Balbir Singh. SI Narinder Singh, Naib

Tehsildar Gurdev Singh and other police officials went to the place where the dead body was kept concealed, which was recovered from the

deserted well. It was identified to be of Anil Mandal by his father Chalahe Mandal. The dead body was taken into possession. Rough site plan of

the place of recovery of dead body was prepared. Offence u/s 302 IPC was added and Special Report was sent to Illaqa Magistrate. Inquest

report of the dead body was prepared and sent for post mortem examination. Statements of witnesses were recorded. Bhaiaro Mandal accused

was arrested on 31.03.2000 who made a disclosure statement admitting the factum of concealment of the dead-body which had already been

recovered. Dinesh Yadav could not be arrested and was declared a Proclaimed Offender. After completion of investigation, charge-sheet was

filed against Pawan Mandal and Bhairo Mandal.

4. Copies of documents relied upon by the prosecution were supplied to the accused-appellants by the Illaqa Magistrate and the case was

committed to the Court of Session vide order dated 18.08.2000 and an offence under Sections 302 read with Section 34 IPC and 201 IPC were

made out against the accused-appellants. Charge under Sections 302/201 IPC read with Section 34 IPC was framed against the accused persons

to which they pleaded not guilty and claimed trial.

5. To prove its case, the prosecution examined as many as nine witnesses, namely Dr.Jagdish Singh Gill PW1, Constable Balbir Singh PW2,

Constable Sarabjit Singh PW3, Head Constable Kapil Kishore PW4, Complainant Chalahe Mandal as PW5, Vinod Yadav PW6, Naib Tehsildar

Gurdev Singh PW7, ASI Balbir Singh PW8 and Sub-Inspector Narinder Singh PW9. After close of the prosecution case, statements of accused

u/s 313 Cr.P.C. were recorded wherein they denied the allegations and pleaded innocence and false implication. They did not produce any

evidence in their defence.

6. The learned trial Court on appreciation of evidence on record, convicted and sentenced the accused-appellants for the offence, as mentioned

above. The present appeal has been filed by the accused-appellants by taking various grounds.

7. Ms.Sumanjit Kaur, learned counsel, appearing for accused-appellants, argued that there is no direct evidence to connect the accused-appellants

with the murder of Anil Mandal and the case of the prosecution is only based upon the circumstantial evidence which is in the form of "last seen"

and recovery of dead body on the basis of disclosure statements made by the accused. The trial Court relied upon the last seen evidence,

disclosure statements and motive put up by the prosecution and held that chain of the prosecution case is complete and no link evidence is missing.

The circumstances are not complete to bring home the guilt to the accused. The last seen story as deposed by Vinod Kumar PW6, does not

connect the accused-appellant with alleged offence.

8. Ms.Sumanjit Kaur further argued that the prosecution has failed to prove its case as to what kind of weapon was used and which injury was

caused by the accused. Moreover, the alleged recovery of dead body on the basis of disclosure statements is suspicious and cannot be attributed

to the accused-appellants as recovery was from an open place which was accessible to all. The motive alleged by the prosecution is also vague as

the dispute between the deceased and Sudama Mandal, the brother of accused-appellant Bhairo Mandal, was already settled long back and there

was no motive for the accused-appellant to commit murder of Anil Mandal after such a long time.

9. Mr.D.S.Brar, learned Deputy Advocate General for the State has argued that the prosecution has fully proved its case against the accused on

the basis of evidence of last seen, recovery of dead body on the basis of disclosure statements and motive.

10. We have heard the learned counsel for the parties and have also perused evidence and other documents on record.

11. The present case is admittedly based on circumstantial evidence and no direct evidence is there as death of Anil Mandal was not witnessed by

any of the prosecution witnesses. The dead body was found in a deserted well which was wrapped in a gunny bag. FIR was registered after a

delay of about 9 days. The trial Court believed the evidence of last seen that the deceased was last seen in the company of accused and also slept

in their company and on the next day, he was not found there. It has not come in the statement of any witnesses as to on which day the deceased

was last seen in the company of accused and up to which time they remained together. The delay in lodging the FIR has also not been explained by

the prosecution which in itself creates suspicion in the case of the prosecution. The motive put up by the prosecution that there was some dispute

with regard to amount of Rs.5000/- spent on purchasing rickshaw, was already settled between the parties. Moreover, that dispute was of much

earlier time and there was no grievance left with either of the party. The dead body was found in the deserted well which was accessible to every

body. The accused were neither seen by any of the prosecution witnesses nor there is evidence on record to prove that the dead body was thrown

in the well by the accused only.

12. It was a blind murder and initially the FIR was lodged u/s 364/34 IPC as the father of the deceased was having suspicion in his mind as the

deceased was last seen in the company of the accused. The offence u/s 302 IPC was converted when the dead body was recovered from the

well. Even on the basis of disclosure statements, no recovery of weapon was made from either of the accused. As per opinion of the doctor, the

injuries were caused by sharp as well as blunt weapons. The weapon of offence was not recovered at the instance of the accused-appellant.

13. Chalahe Mandal complainant stated before the police that on 23.03.2000 Vinod Yadav informed him on telephone that Anil Mandal and

Dinesh Yadav went to Chawla Poultry Farm, Tam Taran, to celebrate holi with Pawan Mandal. Bhairo Mandal, son-in-law of Pawan Manda.

They after taking dinner went to sleep together but in the morning Anil Mandal was not found. Pawan Mandal, Bhairo Mandal and Dinesh told that

Anil Mandal had already left the place during night. Chalahe Mandal deposed before the Court that prior to the death of his son, he was in Bihar in

his native village and he received a telephonic message from Vinod Kumar that his son had been killed by Pawan Mandal, Bhairo Mandal and

Dinesh after administering some poisonous substance. The complainant improved his statement made before the Court. In his cross-examination,

he resiled by stating that he did not state in his statement before the police that he was informed on telephone in Bihar that his son had been killed

by administering poison. He resiled from his statement made in examination-in-chief.

14. The whole case of the prosecution is based on circumstantial evidence and the prosecution has relied upon the statement of Chalahe Mandal,

the father of the deceased, who made statement on which basis the FIR was registered. There was improvement in his statement made before the

Court. The evidence of "last seen" has also not been proved as the dead body was found after nine days and the accused-appellants cannot be

connected with the alleged offence. The disclosure statements made by the accused-appellants are also of no help to them as neither the weapon

used in the offence was recovered not their participation connecting injuries caused to the deceased proved.

15. As per statement of the doctor, there were four injuries which were ante mortem in nature. Injuries No.1 and 2 were caused by sharp edged

weapon whereas injuries No.3 and 4 were caused by blunt weapon. As per opinion of the doctor, the cause of death was due to haemorrhage and

shock as a result of cut throat which were sufficient to cause death in the ordinary course of nature and probable time elapsed between injury and

death was few minutes and between death and post mortem examination was 5 to 12 days. There are material contradictions and discrepancies in

the statements of the prosecution witnesses.

16. The chain of the prosecution story is incomplete and link evidence is missing. When the chain of the prosecution story is incomplete, then it

cannot be said conclusively that it was only the accused-appellants who had committed the murder of Anil Mandal. Without conclusive evidence,

the appellants cannot be convicted on the basis of "last seen" and their disclosure statements which had not been proved by the prosecution. The

motive projected by the prosecution has also not been proved because the dispute between the accused and the complainant was with regard to

payment of amount of rickshaw which had already been settled as the amount had already been paid.

17. The Hon"ble Apex Court in Padala Veera Reddy Vs. State of Andhra Pradesh and others, has laid down that when a case rests upon

circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human

probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The Hon"ble Supreme Court in Hanumant Vs. The State of Madhya Pradesh, has observed thus:

It is well to remember that in cases where the 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 and all the facts so established should be consistent only with the hypothesis of the guilt of the

accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the

one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a

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.

Hon"ble the Apex Court in Chattar Singh & Anr. v. State of Haryana 2009(2) CCC 602 (S.C.): 2008(4) RCR 133 has observed as under:-

An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be

proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom

it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to

any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances,

the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon

and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not

even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of

attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the

accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the

witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it

passes the test of credibility.

18. For the reasons mentioned above, we are of the view that the prosecution failed to prove its case against the accused-appellants Pawan

Mandal and Bhairo Mandal. Hence, the appeal is allowed. The impugned judgment of the trial Court is set aside. The appellants are acquitted of

the charge framed against them. If they are on bail, they shall stand discharged of their bail bonds. If they are in custody, they shall be set at liberty

at once, if not required in any other case.