

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 1878 of 2009

DHARAM PAL

.... **Appellant(s)**

Versus

THE STATE OF HARYANA

....**Respondent(s)**

With

CRIMINAL APPEAL No.1879 of 2009

CRIMINAL APPEAL No. 1880 of 2009

CRIMINAL APPEAL NO. 1377/2017 IN SLP (CrI.) No. 1745 of 2014

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted in Special Leave Petition (CrI.) No.1745 of 2014.

Accused Nos. 2, 3, 5 and 6 have filed these appeals against the judgment of the High Court confirming their convictions and sentences passed by the Sessions Judge, Ambala. Accused No.1 did not prefer an appeal against the judgment of the High Court. The appeal filed by Accused No.4 abated due to his death.

2. Bharat Bhushan Arora(hereinafter referred to as the deceased) son of Sh. Kanwal Nain Arora was the owner of Bharat Furniture

Udhyog, Faridabad. At about 8:00 pm on 10.09.1996, the deceased along with his employee Kamlesh (PW-6) left for Delhi on his scooter to purchase toughened glass sheets for TV showcases. He was scheduled to return back around midnight. As he did not come home even at 2:00 am on 11.09.1996, his father along with Ashok Kumar started searching for him. Initially, they went to the place from where the deceased purchased the toughened glass sheets and were informed that he left the shop at 11:00 pm after purchasing the glass sheets. They went to the house of one Mahinder around 04:30 am and were informed that the deceased met him earlier in the evening but left immediately thereafter. They were frantically searching for the deceased and finally found his dead body around 5:30 pm on 11.09.1996 lying in the bushes on the left side of the road, at a distance of one km. from Anangpur Chowk towards Faridabad. The scooter on which the deceased was travelling was also lying 3-4 feet away from his body. They observed an injury mark near the eye of the deceased and blood on his face. They were surprised to find the body at that spot as, earlier in the day at around 2:00 pm they had searched the same area but there was no sign of a body being there. Kanwal Nain Arora lodged a complaint at

Police Station, NIT Faridabad which was registered as an FIR at 8:00 pm on 11.09.1996 wherein it was mentioned that he suspected Kamlesh to have committed the murder.

3. The investigation was initially carried out by A-4, Inspector Ram Kumar who was assisted by A-5, Dharam Pal ASI and A-6, Mawasi Ram ASI. On completion of the investigation, a closure report under Section 173 was filed on 11.01.1997 in which it was stated that the death was caused due to an accident. As the father of the deceased suspected that his son was murdered, he requested the Government of Haryana to order an enquiry. The District Magistrate, Faridabad ordered a magisterial enquiry to find out about the cause of death of Bharat Bhushan. The magisterial enquiry revealed that the deceased died due to Asphyxia. It was also found in the enquiry that the deceased might have been killed and his body was later placed on Surajkund-Faridabad road. As there was a suspicion of involvement of police officers, the report suggested that the investigation should be entrusted to an agency other than the district police.
4. Ultimately, the investigation was entrusted to Central Bureau of Investigation (CBI). An FIR was registered on 28.11.1997 under Section 302/34 by the CBI and further

investigation was commenced. Further investigation done by the CBI revealed that the deceased who was returning from Delhi along with Kamlesh, the pillion rider holding the glass sheets, stopped the scooter 2 kms. short of Anangpur Chowk at around 11:30 pm on 10.09.1996 to ease himself. Immediately after restarting, Upper Graded Constable Abdul Hai (A-1), Constable Kamal Singh (A-2) and Dharam Raj alias Sarpanch (A-3) came from the opposite direction on a motorbike and signalled the deceased to stop. A-1 and A-2 were in uniform and were armed with rifles. As the deceased did not stop the vehicle, the accused turned the motorbike and as soon as their motorbike came parallel to the scooter of the deceased, A-2 Kamal Singh gave a blow on the head of the deceased with the butt of his rifle. The deceased fell down from the scooter on his left side and became unconscious. Kamlesh Kumar also fell down and received injury on his left knee. Most of the toughened glass sheets were broken into pieces except two glass sheets which were reduced in size. A-1 to A-3 got down from the motorbike and finding the deceased unconscious, dragged him to the nearby bushes. His scooter was also dumped at a distance on the side of the road. When A-2 attempted to

assault Kamlesh (PW-6), he pleaded for mercy. Kamlesh was spared on the condition that he would not disclose the incident to anyone. He was instructed to sit on the pillion of the motorcycle and was taken to the Sales Tax Naka at Anangpur Chowk by A-1 to A-3. Kamlesh was made to hold the two glass sheets and the helmet of the deceased. Thereafter, he was taken to the Police Station where he was illegally detained till 15.09.1996. It was also disclosed during the investigation that the dead body of Bharat Bhushan was dumped at the place where it was found between 4:00 to 5:00 p.m. on 11.09.1996 by A-1 to A-3. In the inquest report, Ram Kumar (A-4) mentioned that there was an injury on the right side of the head with blood marks and swelling on the right eye. The post-mortem was conducted on 12.09.1996 by a team of doctors and as per their report there was no mark of external injury on the body of the deceased. The tongue had protruded between the teeth. The lips were swollen and averted. Blood stained froth was coming out of nostrils. Nails were cynoised. Larynx, trachea, right lung, left lung, liver spleen, kidneys, mouth, pharynx and oesophagus were found congested and the bladder was found empty. After receipt of the report of the

chemical examiner, the team of doctors gave an opinion to the effect that the cause of death was due to Asphyxia. It was found during investigation that A-4 to A-6 manipulated the investigation and submitted a closure report. The recovery memo regarding seizure of blood stained earth containing the blood of the deceased revealed that the blood was of 'A' group whereas the blood group of the deceased was of 'B' group. A-4 to A-6 conspired with A-1 to A-3 to cover up the crime.

5. After a detailed consideration, the Trial Court held that A-1 to A-3 intercepted the deceased with a motive to commit robbery. They actually robbed one golden chain, two golden rings and money which was being carried by the deceased. A-1 to A-3 were also found guilty of having committed the murder of the deceased. A-4 to A-6 were acquitted of committing offences of murder and robbery but were found guilty of committing offences under Section 218 read with 120 B IPC and Section 343 IPC. After convicting them, the Trial Court sentenced the accused as follows:-

Conviction and Sentences Imposed				
Sr. No.	Accused	Conviction under Charges	Sentences	
1.	A-1 Abdul Hai	1	302 r/w 34 IPC	Imprisonment for life and fine of Rs.500/- In default

2.

A-2
Singh Kamal

		Imprisonment for 2 months.
2	394 r/w 120 B IPC	Imprisonment for 7 years and fine of Rs.300/- In default Imprisonment for 2 months.
3	201 r/w 120 B IPC	Imprisonment for 3 years and fine of Rs.200/- In default Imprisonment for 1 month.
4	218 r/w 120 B IPC	R.I. for 3 years.
5	343 r/w 120 B IPC	R.I. for 3 years.
1	302 r/w 34 IPC	Imprisonment for life and fine of Rs.500/- In default Imprisonment for 2 months.
2	394 r/w 120 B IPC	Imprisonment for 7 years and fine of Rs.300/- In default Imprisonment for 2 months.
3	201 r/w 120 B IPC	Imprisonment for 3 years and fine of Rs.200/- In default Imprisonment for 1 month.
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1	302 r/w 34 IPC	Imprisonment for life and fine of Rs.500/- In default Imprisonment for 2 months.
2	394 r/w 120 B IPC	Imprisonment for 7 years and fine of Rs.300/- In default Imprisonment for 2 months.
3	201 r/w 120 B IPC	Imprisonment for 3 years and fine of Rs.200/-

3.

A-3 Dharam Raj
@ Sarpanch

				In default Imprisonment for 1 month.
4.	A-4 Ram Kumar	4	343 r/w 120 B IPC	R.I. for 3 years.
		5	218 r/w 120 B IPC	R.I. for 3 years.
		1.	218 IPC	R.I. for 3 years.
		2.	343 IPC	R.I. for 2 years.
		3.	218 IPC	R.I. for 3 years.
		4.	343 r/w 120 B IPC	R.I. for 3 years.
5.	A-5 Mawasi Ram	218 r/w 120 B IPC	R.I. for 3 years.	
6.	A-6 Dharam Pal	1.	218 r/w 120 B IPC	R.I. for 3 years.
		2.	343 r/w 120 B IPC	R.I. for 3 years.
		3.	342 IPC	R.I. for 1 year.

6. The appeals filed by the accused were dismissed by the High Court and their convictions and sentences were confirmed. After re-appreciating the evidence on record, the High Court held that there is sufficient material to hold that the accused were directly responsible for the death of the deceased. According to the High Court, the fact that Kamal Singh (A-2) gave a blow with the butt of his rifle on the head of the deceased was proved. The High Court held that A1, A2 and A3 made a valiant effort to cover up the incident by creating evidence to show that the deceased died in an accident. The High Court further held that A1, A2 and A3 removed the body from the place where the incident occurred and replaced it at the place where the body was found between

4.00 to 5.00 pm on 11.09.1996. They also smeared the face and upper part of the body of the deceased with blood in order to make it appear like an accident. The High Court also found A1, A2 and A3 guilty of not making any attempt to provide any help to the deceased who was injured, which could have saved his life. A4 to A6 were found complicit of tampering with the official record to help A1 to A3 escape punishment.

7. It is no more *res-integra* that re-appreciation of evidence is not required in a case where conviction has been confirmed by the High Court. (**See:Ramaniklal Gokaldas v. State of Gujarat, (1976) 1 SCC 6, para.3**). However, we have examined the evidence on record and considered the submissions made by both sides. The main contentions of the Mr.S.Nagamuthu, learned Senior Counsel appearing on behalf of some of the Appellants are:

I. That PW 6 is not a reliable witness in view of the fact that he did not disclose the occurrence to anybody for nearly one and half years. He also did not state anything against the accused even in the Magisterial Enquiry. PW 6 disclosed the facts, which form the

basis of the entire case of the prosecution, to the investigating officer PW -71 only on 23.01.1998.

- II. There is contradiction between the ocular testimony of PW- 6 and the medical evidence. It is contended that Asphyxia is not possible without any mark of violence and there is no external injury found on the body of the deceased contrary to the evidence of PW-6 who stated that the deceased was hit on the back side of his head with the butt of a rifle.
8. There is a detailed discussion in the judgments of the Courts below about the illegal detention of PW-6 by the police and the continuous threat held out by the accused to PW-6. The Courts below relied upon the evidence of PW-6, being conscious of the fact that PW-6 could not have stated anything against the accused until the investigation was handed over to the CBI. We are unable to accept the submissions of learned Senior Counsel for the accused that the evidence of PW-6 is unreliable. It is no doubt true that PW-6 revealed the complicity of A1 to A-3 before PW-71 only on 23.01.1998 though the incident was on 10.09.1996. It is clear from the evidence on record that PW-6 was spared by A1 to A-3 only on an assurance that he would not reveal

about the incident to anybody. It was only after the CBI took up the investigation that he mustered strength to approach the Investigating Officer PW-71 and revealed the facts pertaining to the incident dated 10.09.1996. In this background, the evidence of PW-6 cannot be eschewed from consideration only on the ground that there was delay in reporting his version to the Investigating Officer. We reject the submission of learned Senior Counsel for the Appellants that the evidence of PW-6 does not merit favorable consideration.

9. As per the postmortem report, the cause of death is Asphyxia. PW-25, Dr. P.S. Parihar, opined that the death might have been caused because of obstruction of air into mouth and nose by a cloth or pillow being put on his nostrils or mouth. PW-6 deposed in his testimony that the deceased was hit by a rifle butt on the back of his head by A-2 due to which he fell down and become unconscious. The medical evidence shows that there was no external injury on the head of the deceased. Though it appears at the first blush that there is a contradiction between the oral testimony of PW-6 and the medical evidence, on a deeper scrutiny it is clear that there is none. PW-6 deposed about the incident to

the extent he was aware i.e. the blow given by A-2, the deceased falling down and becoming unconscious. Thereafter, PW-6 was taken away by the accused and was unaware about the events that took place later. He did not state anything about the deceased losing his life. According to medical opinion the death was due to Asphyxia. Dr. P.S.Parihar (PW-25) deposed that the death might have been caused by obstruction of air into the mouth and nose due to a cloth/pillow being put on the nostrils and/or mouth. Therefore, there is no variation between the oral and medical evidence.

10. The following circumstances would unerringly point to the guilt of Accused:
 - A. It is clear from the evidence on record that A-1 to A-3 tried to cover up their crime by filing a closure report to the effect that the death of the deceased was due to an accident.
 - B. PW-6 stated in his evidence that A-1 to A-3 caused an injury to the deceased and thereafter dragged and dumped him into the bushes besides the road. They initially took PW-6 to the outpost at Anangpur Chowk and

later to Surajkund police station where he was illegally detained till 15.09.1996.

- c. PW-2, Kanwal Nain Arora, the father of the deceased along with PW-10, Ashok Kumar and PW-12, Harish Arora were frantically searching for the deceased from the early hours on 11.09.1996 on Surajkund - Faridabad road. They found the broken pieces of glass purchased by the deceased on the Surajkund-Faridabad road. There was no trace of the body till it was found on the same road at 5:30 pm on 11.09.1996.
- D. The police had blocked the road between 02:00 pm to 04:00 pm for vehicle or traffic, presumably to enable the accused to place the body at the spot where it was found.
- E. The inquest was not done at the spot but at the police station by A-4. The blood stained earth allegedly removed from the spot where the body was lying did not match with the blood group of the deceased. There was blood on the face of the deceased and his clothes, which also did not match his blood group.
- F. It has also come out in evidence that it rained in the afternoon on 11.09.1996 but the body was found to be dry.

- G. Manipulation of the investigation by A-4 to A-6 in order to shield A-1 to A-3 from punishment for their crime.
 - H. The deceased being unconscious and lying on the road one km. from Anangpur Chowk at 11:30 pm on 10.09.1996 was to the exclusive knowledge of A-1 to A-3. The absence of any explanation forthcoming from the accused as to the circumstances in which the death occurred, raises a presumption against them.
 - I. The disappearance of the body during the day time until it was found at a place different from the site of the incident at 05:30 p.m. would clearly show that A-1 to A-3 were responsible for the removal of the body in the night and placing the body at the site where it was found around 5:30 pm on 11.09.1996.
11. All the above circumstances would show that A-1 to A-3 are responsible for the death, being the only persons having knowledge about the deceased lying at the spot where he was injured at 11:30 pm on 10.09.1996. Complicity of A-4 to A6 has also been sufficiently proved. On the basis of the oral testimony of PW-6 and the strong circumstances which point to their guilt, we uphold the judgments of the Courts below.

12. For the aforementioned reasons, the appeals are dismissed.
The accused are directed to surrender forthwith to serve out
the remainder of their sentences.

.....J
[L. NAGESWARA RAO]

.....J
[NAVIN SINHA]

New Delhi,
August 10, 2017