

Giriraj Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jun-30-2014

Appellant : Giriraj

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Giriraj versus State of Rajasthan (1)DB Criminal Appeal No.1128/2004 Bhagirath & Anr.

versus State of Rajasthan (2)SB Criminal Appeal No.1020/2004 Suresh Kumar versus State of Rajasthan (3)DB Criminal Appeal No.1055/2004 Raju @ Rajendra versus State of Rajasthan (4)DB Criminal Appeal No.1129/2004 Shyama versus State of Rajasthan (5)DB Criminal Appeal No.1147/2004 Against the judgment dated 8.10.2004 passed by Additional Sessions Judge, Pratapgarh in Sessions Case No.21/2004.

Date of Judgment :: 30 th June, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.Shambhoo Singh].Mr.Rakesh Arora].Mr.Suresh Kumbhat].for the appellants Mr.Sheetal Kumbhat].Mr.Mridul Jain].Mr.D.P.Saraswat].Mr.J.P.Bhardwaj].Public

Prosecutors,for the State Mr.Vishnu Kachhawaha]...BY THE COURT : (PER HON'BLE MATHUR,J.) Assailing the judgment dated 8.10.2004 passed by learned Additional Sessions Judge, Pratapgarh in Sessions Case No.21/2004, these five appeals are preferred.

By the -2- judgment impugned, learned Additional Sessions Judge recorded conviction and awarded sentence to the accused appellants as under:- Accused Giriraj - u/S.302 IPC - Life imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo six months simple imprisonment.

u/S.365 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

u/S.201 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

u/S.3/25 Arms Act - Three years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

Accused Raju @ Rajendra - u/S.302/34 IPC - Life imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo six months simple imprisonment.

u/S.365 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

u/S.201 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

Accused Shyam Menaria - u/S.302/34 IPC - Life imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo six months simple imprisonment.

-3- u/S.365 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

u/S.201 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

u/S.3/25 Arms Act - Three years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

Accused Bhagirath - u/S.201 IPC - Five years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

Accused Suresh Kumar - u/S.3/25 Arms Act - Three years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

Accused Anil Jain - u/S.3/25 Arms Act - Three years rigorous imprisonment with a fine of Rs.500/- and in default of payment of fine further to undergo three months simple imprisonment.

The background facts of the case are as follows:- On basis of a written report (Ex.P/42) dated 20.4.2003 at the instance of Shri Mukesh (PW-26), a missing report was lodged at Police Station Arnod about missing of his son Shri Mohit since 10:00 PM on 19.4.2003.

The missing person as per the details given in the written report (Ex.P/42) was wearing maroon colour trouser, lemon and white colour T-Shirt and black chappals.

An apprehension of -4- the involvement of Giriraj and Shyam Menaria in missing of Mohit was also disclosed.

On 22.4.2003 at 06:30 AM, another detailed written report (Ex.P/43) was given by Shri Mukesh at Police Station Arnod with assertion that his son Mohit aged about 20 years went to shop as usual on 19.4.2003 but did not return to home upto 09:30 PM.

While making search, it came into knowledge that at about 8-8:30 PM Mohit was chatting with Shyam Menaria in front of the hotel of Shyam Panda.

It also came into knowledge through Shri Pratap Singh Andewala that Shyam Menaria came to his place in evening at about 04:00 PM.

On 19.4.2003 at 09:30 PM, Suresh Chandra and Amritlal Soni saw Mohit in company of Shyam Menaria, Giriraj and Bhagirath Gurjar.

Complainant Mukesh with one Shri Sanjay Shah then went to the house of Giriraj, a friend of Shyam Menaria at about 02:00 AM in the intervening night of 19.4.2003 and 20.4.2003 to have inquiry, but the house was bolted from inside and no response was given on calling.

In next morning i.e. on 20.4.2003 at about 08:00 AM, Mukesh went to the residence of Shyam Menaria at Avleshwar, where Giriraj met him and advised not to vendor here and there.

He also stated that Mohit would be at home in the next evening.

As per the details given, the missing person was wearing a trouser of maroon colour, T-Shirt of white colour and chappals of black colour.

He was also having a rectangular dial wrist watch and a gold ring in finger.

Apprehension about involvement of Giriraj, Shyam Menaria, -5- Bhagirath Gurjar and Raju @ Rajendra in abduction of Mohit for ransom was also made.

On basis of the report aforesaid, a case for commission of offence punishable under Section 365/34 Indian Penal Code was registered and during couRs.of investigation accused Giriraj was arrested on 22.4.2003 at 08:00 AM and on the same day at 08:15 AM accused Raju @ Rajendra was arrested.

At 09:30 AM on 22.4.2003 accused Giriraj and Rajendra made disclosure about the dead body of Mohit and the place where the offence was committed.

Acting upon the disclosure so made, the dead body of Mohit was recovered and the spot was verified as per document Ex.P/1.

An inquest report was also prepared and the corpus of deceased Mohit was subjected to autopsy.

As per the postmortem report (Ex.P/16) the cause of death of Mohit was blunt injury over scalp causing damage to brain and haemorrhagenic shock. The trouser and T-Shirt worn by the deceased were also seized and sealed.

On basis of further disclosure made by accused Giriraj, a key, chair, bucket, pistol, two pieces of rope and a motorcycle were recovered.

The articles recovered were sent to the Forensic Science Laboratory for their serological and chemical examination.

The report of Forensic Science Laboratory is available on record as Ex.P/77.

The pistol recovered was sent for its ballistic examination and the report of that is available on record as Ex.P/78.

The police also recovered blood stained T-Shirt and banyan of accused Raju @ Rajendra and at his instance -6- the site where actual crime was committed, was also verified.

At the instance of accused Shyam Menaria the place wherefrom the dead body was found was verified on 25.4.2003 and the spot of commission of crime was also verified at his instance.

He also gave an information on 25.4.2003 regarding availability of wrist watch and ring, but no recovery on basis of that was made.

He made disclosure again on 28.4.2003 at 03:10 PM with regard to air pistol cartridge, wrist watch and ring and by acting upon that the articles aforesaid were recovered as per Ex.P/31.

Accused Bhagirath Gurjar came to be arrested on 23.4.2003 and on basis of a disclosure made by him, a chappal was recovered as per document Ex.P/25.

Accused Anil Jain and Suresh were arrested on 6.6.2003.

On the same day at 08:25 PM accused Anil Jain made a disclosure about selling of one pistol to Giriraj but on basis of this information two live cartridges were recovered as per document Ex.P/8.

The investigating agency after completion of investigation submitted a police report before the court of learned Judicial Magistrate, Pratapgarh and the case being triable by the court of Sessions was committed to that court.

Learned Sessions Judge transferred the case for its adjudication to learned Additional Sessions Judge (Fast Track).Pratapgarh on 28.7.2003.

Learned Additional Sessions Judge after hearing the accused persons framed -7- charges for commission of offences punishable under Sections 365, 302/120-B, 201 Indian Penal Code and 3/25 Indian Arms Act against accused Giriraj and Shyam Menaria.

Accused Raju @ Rajendra and Bhagirath Gurjar were charged for commission of offences punishable under Sections 365, 302/120-B and 201 Indian Penal Code.

Accused Anil Jain and Suresh Jain were charged for commission of offences punishable under Section 302/120-B Indian Penal Code and 3/25 of the Indian Arms Act.

On denial of the charges, trial commenced as desired.

The prosecution supported its case with the aid of 29 witnesses and several documents and articles.

Opportunity was accorded to the accused persons to explain adverse and incriminating circumstances against them in prosecution evidence and while availing that they pleaded their innocence with assertion that they were implicated in the case concerned falsely.

In defence, on behalf of accused Giriraj and Rajendra, statements of Ishwar Singh (DW-1) and Badrilal (DW-2) were recorded.

Two documents were also adduced in evidence by the accused persons.

The trial court after examining the entire evidence available on record and considering the rival submissions, recorded conviction and awarded sentence.

For adjudication of these appeals we deem it appropriate to examine case of each accused independently on basis of the evidence available.

-8- Out of six convicted accused persons three accused viz.

Bhagirath, Anil Jain and Suresh Kumar have been convicted for the offences other than Sections 302, 302/34 and 365 Indian Penal Code.

Having considered the same and also looking to the nature of evidence available against them we find it appropriate to adjudicate their case first.

Accused Bhagirath :- This accused has been convicted for an offence punishable under Section 201 Indian Penal Code and is sentenced to undergo five years rigorous imprisonment with a fine of Rs.500/- with default stipulation.

The sole evidence against this accused is verification of the place where the crime was committed and recovery of a chappal on basis of the information given.

As per document Ex.P/24 accused Bhagirath on 24.4.2003 led the investigating agency to the place where crime was committed.

Shri Shantilal (PW-14) and Bherulal (PW-16) were the attesting witnesses.

These two witnesses in quite unambiguous terms stated that no verification of spot was made in their presence, though he accepted availability of his signatures on the document.

As per this witness signatures were obtained at police station.

The other witness Bherulal (PW-16) too did not support the prosecution story.

As a matter of fact both the witnesses named above were declared hostile.

As already stated a chappal was also recovered at the instance of accused Bhagirath as per document Ex.P/25 on 24.4.2003.

The attesting witnesses of this chappal were also Shantilal -9- (PW-14) and Bherulal (PW-16) and they did not support the prosecution case.

It is also relevant to note that the spot of committing crime was disclosed by other accused persons prior to this accused and as such the same was already in knowledge of the police.

Beside the evidence discussed above no other evidence is available against this accused.

The evidence on which prosecution relied has not been established and, therefore, that is not at all sufficient to convict accused Bhagirath for the offence punishable under Section 201 Indian Penal Code.

No material as a matter of fact is available on record to substantiate that any effort was made by this accused to disappear the evidence.

Accused Anil Jain :- This accused was arrested on 6.6.2003 at 08:25 PM.

A disclosure was made by this accused about purchase of two pistols and further selling of a pistol to accused Giriraj.

This accused also disclosed hiding of two cartridges near a tree.

On basis of the information given, two live cartridges were recovered on 7.6.2003 as per document Ex.P/8 at 01:10 PM.

Shri Amritlal (PW-4) and Shri Udailal (PW-29) were the attesting witnesses of the recovery.

Both the witnesses have not supported the prosecution case, therefore, they were declared hostile.

Suffice to mention that this accused alongwith other accused Suresh also verified the site where this accused alongwith Suresh purchased two pistols and 12 live cartridges.

The fact of verification of site too has not -10- been supported by the attesting witnesses.

No evidence as such is available to held this accused guilty for an offence punishable under Section 3/25 Indian Arms Act.

Accused Suresh Kumar :- This accused too has been convicted for an offence punishable under Section 3/25 Indian Arms Act.

This accused was also arrested on 6.6.2003.

A disclosure as per document Ex.P/59 was made by him on 6.6.2003 itself that he and accused Anil purchased two pistols and 12 cartridges from Shri Mukesh son of Dhuraji Kalal and out of those one pistol and 10 cartridges were sold to accused Giriraj.

On basis of the information so given recovery of a pistol from a well was made.

Shri Amritlal (PW-4) and Shri Udailal (PW-29) were the attesting witnesses.

Both the witnesses did not support the prosecution story, thus, were declared hostile.

No other evidence except the alleged recovery is available on record to substantiate the charge.

The evidence available is not at all sufficient to arrive at a definite conclusion about recovery of the pistol at the instance of this accused.

As such, his conviction for the offence punishable under Section 3/25 of the Indian Arms Act is not well founded.

The appreciation of the evidence in the terms above clearly indicates that conviction of accused Bhagirath for the offence punishable under Section 201 Indian Penal Code and accused Anil Jain and Suresh Kumar for the offence punishable under Section 3/25 of the Indian -11- Arms Act is not founded on adequate evidence.

As a matter of fact no evidence is available to record their conviction.

Accused Shyam Menaria - This accused has been convicted for the offence punishable under Sections 302/34 and 201 Indian Penal Code in addition to an offence punishable under Section 3/25 Indian Arms Act.

As per the prosecution this accused was arrested on 25.4.2003 and on the same day at 02:45 PM a disclosure was made by him with regard to the spot where the crime was committed and also about the place wherefrom dead body of Mohit was recovered.

The verification of the spots abovementioned was also made as per documents Ex.P/28 and Ex.P/29 on 25.4.2003 at 06:00 PM.

Shri Shantilal and Shri Bherulal, PW-24 and PW-16 respectively were the attesting witnesses.

Both these witnesses did not support the prosecution and were declared hostile.

It is pertinent to notice that the place where the crime was committed and the site wherefrom the dead body was recovered was already in knowledge of the investigating agency in pursuant to the disclosure made earlier by accused Giriraj and Raju @ Rajendra.

This accused also made a disclosure about a watch and ring on 28.4.2003 as per document Ex.P/58, however, no recovery in pursuant thereto was made.

As such, the information given is of no consequence.

On 28.4.2003 itself at 03:10 PM as per document Ex.P/7 this accused made a disclosure about availability of air pistol, cartridges, watch and ring.

By acting upon this information a air -12- pistol, cartridge, watch and ring were recovered on 28.4.2003 as per document Ex.P/31.

This recovery was also made in presence of Shri Shantilal (PW-24) and Shri Bherulal (PW-16). These two witnesses have not supported the prosecution.

As such they were declared hostile.

No other evidence except mentioned above is available against accused Shyam Menaria.

As already stated, the place of occurrence of crime and the site wherefrom dead body was recovered, were already in knowledge of the police team prior to the disclosure made by this accused and further the recovery made at the instance of this accused has not been supported by the attesting witnesses.

For the sake of argument even if the recoveries made at the instance of this accused be accepted, then too the same is of no consequence as no material is available on record to connect these articles with the crime relating to murder.

Suffice to mention that no identification of the ring and wrist watch was made during the couRs.of investigation.

In this factual background the circumstances on which the prosecution relied upon and accepted by the trial court, in our opinion, are not sufficient to arrive at a conclusion that may indicate definite involvement of the accused in the crime in question.

Accused Giriraj and Raju @ Rajendra :- The fiRs.set of evidence against accused Giriraj and Raju @ Rajendra is of last seen, but that has not been supported by any evidence.

One witness Suresh has not been -13- produced in evidence and other Amritlal (PW-4) has not supported the prosecution, thus, was declared hostile.

The other set of evidence is relating to presence of accused Giriraj, Raju @ Rajendra and Shyam Menaria in the vicinity where the crime was committed.

Shri Pankaj Jain (PW-3) stated that on 19.4.2003 at about 12:30 - 01:00 AM Shyam Menaria, Raju and Giriraj came to him and asked for puncture shop.

Out of these three persons two persons slept there on a Co.and one person left the place.

This witness disclosed his ignorance about the time when these two persons left the place.

Shri Vishal Singh (PW-5) stated that on 19.4.2003 he alongwith his friend Pappu Dhobi was going to Nai Aabadi, Arnod.

At about 10:30 PM Giriraj came to him on a Yamaha Motorcycle.

He demanded a sack from him.

Shri Pappu Dhobi (PW-6) also stated facts in the same line.

These two accused were arrested in the morning of 22.4.2003.

After arrest, at 08:00 AM a disclosure was made by accused Giriraj at 09:30 AM about the place where dead body of Mohit was lying.

At the same time a similar disclosure was made by other accused Raju @ Rajendra.

At the instance of these accused the place was verified as per document Ex.P/1 in presence of Sudhir (PW-1) and Raju Joshi son of Madan Joshi (PW-28).The dead body of Mohit was recovered from the spot verified.

-14- On 23.4.2003 at 07:00 AM accused Giriraj made a disclosure about the place where the crime relating to murder of Mohit was committed.

He also disclosed about availability of the key of lock put on at the site aforesaid.

The same disclosure was made by other accused Raju @ Rajendra at 07:15 AM as per document Ex.P/53.

On basis of the information provided by these two accused the investigating agency verified the site as per document Ex.P/45.

The site was verified in presence of Raju Joshi (PW-28) and Udailal (PW-29).In presence of the witnesses named above the police team also made recovery of a plastic chair and a plastic bucket having blood stains at the instance of accused

Giriraj.

The recovery was made from the spot where the crime was committed.

The blood stains available on the articles aforesaid were sent to the Forensic Science Laboratory for their serological examination.

The report of the Forensic Science Laboratory is available on record as Ex.P/77.

As per the report aforesaid the plastic bucket and the plastic chair were having blood stains of O.

group.

The clothes of deceased too were having blood stains of group O. The clothes worn by deceased Mohit were seized by the investigating agency as per document Ex.P/4 while recovering dead body as per the information given by accused Giriraj as well as Raju @ Rajendra.

On 25.4.2003 accused Giriraj made a disclosure about availability of a motorcycle on which dead body of deceased Mohit was carried from the room -15- where the crime of murder was committed to the place where the body was thrown.

Acting upon the information a motorcycle was recovered as per document Ex.P/30.

The silencer of the motorcycle was having blood stains and a piece of burnt skin was also stuck on that.

The silencer was sent for its chemical examination to the Forensic Science Laboratory and as per its report (Ex.P/77) the skin available on the silencer was of human origin. Pertinent to note here that as per medical evidence available on record the dead body of Mohit was having little burns on his leg and the skin at that place was not available.

This fact has also been substantiated by Shri Surajmal (PW-28), the Investigating Officer.

On 25.4.2003 accused Giriraj made a further disclosure as per document Ex.P/50 in relation to availability of a pistol, nine live cartridges and one fused cartridge cover.

On basis of the information aforesaid a pistol, nine live cartridges and a fused cartridge cover were recovered as per document Ex.P/26.

The pistol was sent for its examination to armour Mitthu Singh whose testimony was examined by the court as PW-20.

As per this witness the pistol recovered was serviceable and a live cartridge of 22 bore could have been fired from that.

The report of the ballistic expert is also available on record as Ex.P/78 and the findings given in that read as under:- 1.

The mechanism of one 9 mm.

pistol (W/1) from packet was found in working order.

However, this pistol (W/1) has also the tendency to misfire ammunition.

-16- 2.

The examination of barrel residue indicates that such 9 mm.

pistol (W/1) had been fired.

However, the definite time of its last fire could not be ascertained.

3.

Based on stereo and comparison microscopic examination, it is the opinion that :-

(a) one 9 mm.

cartridge case (C/1) from packet 'A/5' has been fired from submitted 9 mm.

pistol.

(W/1).(b) two 9 mm.

cartridges (L/2 & L/3) from packet 'A/5' have been misfired from submitted 9 mm.

pistol (W/1).(c) one 9 mm.

cartridge (L/1) from packet 'A/5' has been misfired from submitted 9 mm.

pistol (W/1).4.

Six 9 mm.

cartridges (L/4 to L/9) from packet 'A/5' fireworthy ammunition and can be fired from 9 mm.

pistol.

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At the instance of accused Raju @ Rajendra a T-Shirt and a clothe of banyan were also recovered as per document Ex.P/54.

The articles recovered were having blood stains.

As per the prosecution the T-Shirt and banyan clothe were used as a mop to clean the blood stains on the floor where a gun shot was given to deceased Mohit.

The clothe of banyan was also tide on the head of deceased after giving fire arm injury.

These two articles were sent to the Forensic Science Laboratory and as per its report Ex.P/77 both the articles were found with stains of O.

-17- group blood.

The recovery memo Ex.P/38 bears signatures of the accused also in addition to the signatures of the attesting witnesses Shantilal and Dilip Soni.

The Investigating Officer Surajmal (PW-28) has also given necessary details about recovery made on 24.4.2003 at the instance of accused Raju @ Rajendra.

Suffice to mention here that this document was shown to the accused and while answering adveRs.and incriminating evidence relating to that, the accused simply stated that he do not know anything.

No explanation is given by him about availability of his signatures on the document concerned.

The attesting witnesses Dilip (PW-22) and Shantilal (PW-24) did not support the recovery aforesaid.

The case of accused Giriraj and Raju @ Rajendra is required to be examined with the aid of the evidence discussed above.

The argument advanced by learned counsel for the appellants with regard to these two accused persons is that not even a single circumstance has been definitely established, therefore, there is no question of having a chain of circumstances indicating only one conclusion i.e.involvement of the accused in the crime in question.

While opposing the appeals, the submission of learned Public Prosecutor is that so far as accused Giriraj and Raju @ Rajendra are concerned, they made a disclosure about the place where the dead body of deceased Mohit lying and was recovered.

They also disclosed the place where the crime was committed and at their instance certain recoveries were made which clearly connect these accused -18- persons with the crime.

It is asserted that by placing all the circumstances in seratim a finding regarding involvement of the accused persons in the crime in question is obvious.

Heard learned counsels for the appellants and also the learned Public Prosecutor.

In view of the medical evidence available on record, there is no doubt about homicidal death of Mohit.

As per Dr.

R.P.Jain (PW-13).the deceased was having a fire arm injury in his right temporal bone just below the ear.

The bullet that entered from right temporal side had exit hole on other side.

This fire arm injury was the cause of death.

This witness also clarified that in the postmortem report submitted by him the word blunt.

as a matter of fact is bullet.Accused Bhagirath, Suresh Kumar and Anil Jain faced trial for the offence punishable under Section 201 Indian Penal Code, 3/25 Indian Arms Act and 3/25 Indian Arms Act respectively.

As already discussed in preceding paras no adequate material is available on record to establish their guilt.

Accused Bhagirath was charged for an offence punishable under Section 201 Indian Penal Code and is convicted by relying upon recovery of a chappal and further the verification of the place where crime was committed.

The witnesses on which prosecution relied did not support the prosecution case and as such the case against this accused is of no evidence.

Necessary -19- discussion in relation to the evidence available has already been made in earlier parts of this judgment.

With regard to accused Anil Jain and Suresh Kumar the case of the prosecution was that these two witnesses sold a pistol to accused Giriraj and they were also in possession of an unlicensed fire arm.

The revoery of fire arm has not been supported by witnesses Amritlal (PW-4) and Udailal (PW-29).No evidence as such is available against these two accused

persons also and, therefore, their conviction is ill-founded.

The evidence, on which prosecution relied upon has already been discussed with a finding in preceding paras.

Accused Shyam Menaria has been found guilty for the offences punishable under Sections 302/34 and 201 Indian Penal Code in addition to the offence punishable under Section 3/25 Indian Arms Act.

The evidence against this accused is - (1)his presence in the vicinity where the crime was committed; (2)verification of the place where the crime was committed and the dead body of Mohit was recovered; and (3)recovery of wrist watch and ring said to be of Mohit and also recovery of air pistol and cartridge.

-20- So far as presence of this accused in the vicinity is concerned, to establish this circumstance, reliance is placed upon the statement made by Shri Pankaj Jain (PW-3).As per this witness Shyam Menaria alongwith Giriraj and Raju @ Rajendra in late night came to him and asked for a puncture shop.

This witness maintained his version in cross examination too.

On basis of the statement given by Pankaj Jain (PW-3) the fact stands established is that accused Shyam Menaria was in company of co-accused Giriraj and Raju @ Rajendra.

This circumstance alone is not at all adequate to record guilty, therefore, the other evidence available is to be pondered.

So far as evidence in relation to verification of the place where dead body was recovered and the crime was committed is concerned, suffice to mention that the places abovementioned were already in knowledge of the police being disclosed and verified by co-accused Giriraj and Raju @ Rajendra.

The place where the crime was committed too was disclosed and verified by abovenamed co-accused persons on 23.4.2003.

As such, the verification of places concerned by accused Shyam Menaria is not of much consequence.

So far as recoveries made at the instance of this accused is concerned, those have not been established as the attesting witnesses have not supported the same.

It is further relevant to note that the ring and watch said to be of Mohit Jain were not even subjected to identification.

In view of it we are of the considered opinion that the -21- circumstances on which prosecution relied are not sufficient to record conviction of this accused.

So far as accused Raju @ Rajendra is concerned, the circumstantial evidence against him is - (1)presence in the vicinity where the crime was committed; (2)the disclosure of the site wherefrom the dead body was recovered; (3)the disclosure of the place where the crime was committed; (4)recovery of blood stained T-Shirt and clothe of banyan as per document Ex.P/54; and (5)matching of blood group of blood stains available on the clothes aforesaid with the blood group of deceased.

This accused has been convicted for the offences punishable under Sections 365 and 302/34 Indian Penal Code.

On being arrested in the morning of 22.4.2003 this accused made a disclosure alongwith co-accused Giriraj about the place where the dead body of Mohit was lying.

The place aforesaid was verified by the police team and that has been supported by the attesting witnesses.

The argument advanced by learned counsel for the appellant is that accused Giriraj fiRs.disclosed about the -22- place where the dead body was lying, therefore, the disclosure made by accused Raju @ Rajendra is of no consequence.

We do not find any merit in the argument advanced.

Accused Giriraj and Raju @ Rajendra both were arrested simultaneously and a joint disclosure was made.

Such kind of joint disclosure is quite usual and, therefore, no reason exists to disbelieve the evidence adduced in this regard.

This accused also disclosed the place where the crime was committed.

On basis of the disclosure made, dead body was recovered and from the place of crime certain articles having blood stains were recovered.

As such, the evidence in relation to disclosure and verification of the places above stands established against this accused.

At the instance of this accused a piece of clothe having blood stains and T-Shirt having blood stains were also recovered.

True it is, the attesting witnesses have not supported the recovery made by the police team, but looking to the fact that the accused himself has not denied and explained his signatures available on the recovery memo and further the attesting witnesses too accepted their signatures on the recovery memo and also in view of the evidence adduced by the Investigating Officer, we do not find any reason to disbelieve the evidence pertaining to recovery of the articles at the instance of this accused.

-23- The articles recovered were having blood stains of the group matching with the blood group of deceased Mohit.

The weapon of offence has not been recovered at the instance of this accused but from accused Giriraj, therefore, he has been convicted for the offence punishable under Section 302/34 Indian Penal Code.

The sharing of common intention is apparent in view of the fact that deceased Mohit was fiRs.kept in a room and after his killing, his dead body was thrown at some other place.

In view of the evidence available, we do not find any wrong with the conviction recorded by the trial court.

The evidence against accused Giriraj on which the trial court based its conviction is as under:- (1)presence of the accused in vicinity where the crime was committed; (2)demand of a sack by this accused from Vishal Singh and Pappu Dhobi; (3)disclosure and verification of the place wherefrom the dead body was recovered; (4)disclosure and verification of the place where the crime was committed; (5)recovery of a pistol, live cartridges and a fused cartridge cover; -24- (6)the evidence adduced by the armour; (7)the evidence relating to ballistic findings as per Ex.P/78; (8)recovery of the blood stained bucket and a blood stained plastic chair; (9)the matching of the blood group of blood stains available on the articles aforesaid with the blood group of deceased; (10)recovery of a motorcycle at the instance of accused Giriraj; (11)availability of a piece of human skin on the silencer; and (12)availability of burn marks on the leg of deceased Mohit.

The circumstances mentioned above have adequately been established by the trial court.

Shri Pankaj Jain (PW-3) in specific terms disclosed presence of Giriraj in late night of 19.4.2003 alongwith co-accused Raju @ Rajendra and Shyam Menaria.

Shri Vishal Singh (PW-5) and Pappu Dhobi (PW-6) in quite definite terms stated that in the night of 19.4.2003, Giriraj made a demand of sack from them.

This accused was arrested on 22.4.2003 and on the -25- same day he made a disclosure about the place where the dead body was lying.

On basis of the disclosure made by him, dead body was recovered and that has been supported by the attesting witnesses.

The place where the crime was committed too was disclosed by this witness and that too was verified by the investigating agency.

The verification of the site has also been supported by the attesting witnesses.

From the place where the crime was committed, the investigating agency recovered a blood stained bucket and a blood stained chair at the instance of this accused.

The blood stains available on the plastic chair and the bucket were of blood group O., matching with the blood group of the deceased.

At the instance of this accused a pistol was recovered with live cartridges as well as fused cartridge cover.

The ballistic expert report clearly indicates the use of pistol in the crime in question.

Shri Mitthu Singh, Armour, also established that the pistol was serviceable.

An important evidence in the matter is recovery of a motorcycle at the instance of this accused having a human origin skin stucked on its silencer.

In the medical evidence it was noticed that in the leg of deceased Mohit there was a burn mark and the skin was not there.

The human skin would have been stucked to silencer while carrying dead body from the place where the crime committed to the place where the dead body was thrown.

This fact also connects accused Giriraj with the crime in question.

All the circumstances noticed above clearly indicates one and only conclusion i.e.about involvement of accused Giriraj in the crime.

As such, his conviction by the trial court is founded on adequate evidence.

-26- In view of whatever discussions made above, the appeals preferred by accused Giriraj son of UnkarLal and Raju @ Rajendra son of Ramesh Chandra Sharma are dismissed.

The conviction of these accused recorded by the trial court and the sentence awarded is hereby affirmed.

Accused Giriraj is already under State custody.

Other accused Raju @ Rajendra is availing suspension of sentence.

Let he be arrested forthwith and be sent to the State custody.

The appeals preferred by accused Bhagirath son of Nanda Gujar, Anil son of Keshavlal Jain, Suresh Kumar son of Shantilal Jain and Shyama son of Bhanwarlal Menaria are allowed.

Their conviction by the trial court is set aside.

Accordingly the sentence awarded too is set aside.

These accused persons are availing suspension of sentence, therefore, the bail bonds and sureties furnished for the purpose are hereby discharged.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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