
(2010) 05 P&H CK 0256

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA No. 412-DB of 1999

Tejpal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 5, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 313
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench: Division Bench

Judgement

Mehinder Singh Sullar, J.

Assailing the impugned judgment of conviction and order of sentence dated 8.6.1999, the Appellant Tejpal son of Mai Baksh (hereinafter to be referred as "the Appellant") has directed the present appeal, vide which, he alongwith his (brother) co-accused Ruldu Ram, was convicted and sentenced by the Sessions Judge, to undergo sentence of life imprisonment, to pay a fine of Rs. 5000/-each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year, for the commission of offence punishable u/s 302 IPC.

2. The conspectus of facts/evidence, in epitome, culminating in the commencement of, relevant for disposal of present appeal and emanating from the record, unfolded during the trial, is that the marriage of Lakshmi Devi (deceased) daughter of complainant Puran Singh (PW4) was solemnized with main accused Ruldu Ram, while the marriage of his other daughter Santosh was performed with Appellant Tejpal on 14.6.1990, according to Hindu rites and ceremony. Accused Ruldu Ram was residing separately from his parents along with his wife for the last 21/2 years prior to the present occurrence. No issue was born out of their wedlock. Ruldu Ram was stated to have been harassing his wife and compelling her to bring money. On her asking, PW4 once gave Rs. 1000/-and then Rs. 3000/-to Ruldu Ram. The marriage of Roshan (PW5), nephew of PW4, took place in village Kunwari, District

Hisar on 6.4.1998 and Lakshmi Devi, Santosh and Ruldu Ram participated in it. Ruldu Ram was not satisfied with the customary gifts given to him in that marriage. Feeling aggrieved, he returned to his village Kakrodh on 8.4.1998 alongwith Lakshmi Devi and Santosh.

3. The prosecution claimed that on 9.4.1998, PW5 went to the house of accused in village Kakrodh, for giving sweets etc. of his marriage. As soon as, PW5 reached there, it revealed that Ruldu Ram had killed Lakshmi Devi by strangulating her neck with a rope. He returned to his village Kunwari and informed PW4 in this respect. Having received the information when PW4 was going to report the matter to the police alongwith his brother Nathu Ram (PW9) and PW Ram Parsad Ex-Sarpanch and as soon as, they reached near railway crossing, Uchana, in the meantime, ASI Ram Mehar (PW10) met them and recorded his (PW4) statement (Ex.PD). PW10 made his endorsement (Ex.PD/1) on it and sent the same to the Police Station Uchana for registration of the case.

4. Levelling a variety of allegations, in all, according to the prosecution, that on the night intervening 8/9.4.1998, the main accused Ruldu Ram committed the murder of his wife Lakshmi Devi, by strangulating her neck with a rope, the Appellant caught hold of her hands and abetted the commission of crime. On the basis of aforesaid allegations and in the wake of statement (Ex.PD) of PW4, the present case was registered against the accused, vide FIR No. 124 dated 9.4.1998 (Ex.PE), on accusation of having committed the offence punishable u/s 302 IPC by the Police of Police Station Uchana, in the manner indicated here-in-above.

5. After the completion of the investigation, the final report/challan as envisaged u/s 173 Cr.PC was submitted against the accused to face the trial for the aforesaid offence. Since the case was triable by the Court of Session, so, it was committed for trial by the Sub Divisional Judicial Magistrate, Narwana, vide his commitment order dated 7.9.1998. Consequently, they appeared before the Court of Session in pursuance of commitment of the case.

6. Having completed all the codal formalities, the trial Judge framed the charge u/s 302 IPC against the Appellant and his (brother) co-accused Ruldu Ram, vide order dated 16.10.1998. As they did not plead guilty and claimed trial, therefore, the case was slated for evidence of the prosecution.

7. The prosecution, in order to substantiate the charge framed against the Appellant, examined PW1 Inder Singh, Photographer, who, on 9.4.1998, snapped four photographs (Ex.P5 to Ex.P8) vide negatives (Ex.P1 to Ex.P4) of the place of occurrence, where the dead body was lying. PW2 Laxman Singh constable prepared the scaled site plan (Ex.PA) at the instance of Puran Singh complainant with its correct marginal notes. PW6 ASI Prem Chand recorded the formal FIR (Ex.PE) on 9.4.1998, on the basis of statement (Ex.PD) of Puran Chand. PW7 Randhir Singh constable projected that on 9.4.1998 at 2 A.M., he handed over the special report

(Ex.PE) to the Illaqa Magistrate.

8. Now adverting to the medical evidence, PW3 Dr. R.K. Singla conducted the post mortem examination on the dead body of Lakshmi Devi on 10.4.1998 vide PMR (Ex.PB) and found Rigor Mortis in both lower limbs. He also noticed ligature mark 1.5 cm in width on anterior part of neck on right side going horizontally on right lateral side, posterior part of neck and on left lateral side. According to PW3, there was no ligature mark on the left anterior part of neck. The ligature mark was present on the anterior side above thyroid cartilage and on posterior side at lower part of hair line. Base of ligature mark was dark and red in colour and congested. PW3 maintained that on dissection underlying subcutaneous tissues were congested and the fracture of cornu of hyoid bone was present. Face, neck, upper anterior part of chest and four upper limbs were congested and cyanosed. He handed over a well stitched dead body after postmortem examination, copy of PMR, police papers, sample seal impressions and two sealed vials alongwith bundle of clothes. PW3 described probable duration that elapsed between injury and death was immediate and between death and postmortem was between 18 to 36 hours.

9. The next to note is the testimony of complainant Puran Singh (PW4). Instead of reproducing his entire statement in toto and in order to avoid the repetition, suffice it to say, that he (PW4) attempted to corroborate the contents of his earlier statement (Ex.PD), which formed the basis of FIR and, inter-alia, maintained that on 9.4.1998, Roshan went to the house of the accused to deliver the clothes and sweet and on return from there, he told that Lakshmi had been killed. He made his statement (Ex.PD) before the police in this regard and thumb marked the same in token of its correctness.

10. Sequelly, PW5 Roshan has also corroborated his initial version relatable to the motive and, inter-alia, stated that on 9.4.1998, he went to the house of the accused to deliver the clothes etc. at about 10/11 A.M. When he reached the house of the accused, he found that the dead body of Lakshmi was lying on a cot and some ladies were sitting outside. He noticed that Ruldu and Tejpal accused were coming out of the room where the dead body of Lakshmi was lying, having ligature mark on her neck. He returned to his village Kunwari and informed his father and uncle Puran about the incident.

11. Likewise, PW9 Nathu Ram, father of PW5 and brother of PW4 has also maintained, on oath, that on 9.4.1998, he sent Roshan to Ruldu's house alongwith sweet etc. and on return, Roshan told him that Lakshmi was lying dead at the house of Ruldu accused. He alongwith his brother Puran left for the Police Station, Uchana to lodge the report and police met them at the railway crossing, Uchana and recorded the statement (Ex.PD) of Puran Singh. Then, they accompanied the police to the village of the accused and saw that Lakshmi was lying dead in their house.

12. The next to mention is the statement of PW8 Dhup Singh, who has deposed that about 11/111/2 months ago, the two accused had come to his house. Ruldu Ram accused said that they had killed Lakshmi and he should help them. PW8 inter-alia, stated that Ruldu Ram had told him that when they reached their village after attending the marriage of Roshan, Lakshmi had quarreled with them, as to why they had insulted their parents at the house of Nathu. Thereafter, Ruldu tried to strangulate Lakshmi by putting a rope around her neck, but in the meantime, Tejpal reached there and caught hold of the hands of Lakshmi. They also told him that they tightened the rope around Lakshmi's neck and she died. According to PW8, accused Tejpal then said that his brother Ruldu had committed a mistake and he helped him in doing so by catching hold of the hands of Lakshmi at the time of strangulation. Thereafter, he took them in a jeep towards Police Station Uchana and the police met on the railway crossing and he produced both the accused before the police. PW8 further deposed that the police interrogated Ruldu accused in his presence, who disclosed that he had kept buried a rope in a heap of wheat husk (Toori) lying in his house and offered to get the same recovered. His statement (Ex.PF) was recorded, which was signed by him as well as Ruldu accused. Ruldu accused then took them to his house and recovered a rope from the disclosed place, which was taken into possession, vide recovery memo (Ex.PG).

13. PW10 ASI Ram Mehar conducted the initial investigation and testified the fact of recording the statement (Ex.PD) of Puran Singh (PW4) and stated that he made endorsement (Ex.PD/1) on it and sent the same to the police station for registration of the case. Thereafter, he accompanied the complainant to village Kakrodh and got the dead body of Lakshmi photographed, prepared the inquest report (Ex.PB/2) and the dead body was sent for post mortem examination alongwith the application (Ex.PB/1). PW10 prepared the site plan (Ex.PH) of the place of occurrence with its correct marginal notes and recorded the statements of the witnesses. He searched for the accused at night but in vain. On the next day, he handed over the investigation to Daya Nand Inspector and after completion of the investigation, the final police report/challan u/s 173 Cr.PC was prepared by S.I. Jagat Singh, whose signatures he identified.

14. The last to note is the testimony of PW11 Daya Nand, District Inspector, the main Investigating Officer, who claimed that he verified the investigation conducted by PW10 and thereafter took into possession the sealed parcels, vide recovery memo (Ex.PJ) on 10.4.1998. On the same day, Dhup Singh Sarpanch produced both the accused before him and he arrested them. He maintained that during the course of interrogation, Ruldu Ram accused disclosed that he had kept concealed a rope in wheat husk (Toori) lying in his residential Kotha and offered to get the same recovered. His statement (Ex.PF) was recorded and in pursuance thereof, the rope (Ex.P9) was recovered and taken into possession, vide recovery memo (Ex.PG), attested by the witnesses. The seal after use was handed over to Dhup Singh, Sarpanch. He prepared the rough site plan (Ex.PK) of the place of recovery and

recorded the statements of the witnesses. He also identified the signatures of SHO Jagat Singh on the report u/s 173 Cr.PC.

15. Having closed the prosecution case, the statements of the accused were recorded. The entire incriminating material appearing in the evidence was put to enable them to explain any circumstance appearing against them, as contemplated u/s 313 Cr.PC. The Appellant stoutly denied the prosecution evidence in its entirety and pleaded false implication. He did not lead any evidence in his defence. But his co-accused Ruldu Ram tendered in evidence copies of orders dated 27.8.1998, 23.12.1998, 22.2.1999 and 4.5.1999 (Ex.DA to DD) respectively. This is the entire evidence brought on record by the parties.

16. The trial Judge, after taking into consideration the entire evidence on record, convicted and sentenced the Appellant as well as his co-accused Ruldu Ram, in the manner depicted here-in-above.

17. The Appellant did not feel satisfied with the impugned judgment of conviction and the order of sentence and filed the present appeal. That is how, we are seized of the matter.

18. At the very outset, the learned Counsel for the Appellant contended with some amount of vehemence that the story of the prosecution is highly improbable and there is not an iota of evidence on record to prove the charge against the Appellant. Thus, he prayed for acceptance of the instant appeal.

19. On the contrary, although the learned State counsel has fairly admitted that there is no evidence against the Appellant except extra judicial confession made before PW8, but still, he urged that since the trial Judge has rightly convicted and sentenced the Appellant, so, no interference is warranted in this regard.

20. We have heard the learned Counsel for the Appellant and the learned State counsel and have gone through the evidence on record with their valuable help.

21. It is not a matter of dispute that the marriage of Lakshmi Devi (deceased) was solemnized with accused Ruldu Ram while the marriage of her sister Santosh was performed with the Appellant. Accused Ruldu Ram was residing with his wife (deceased) separately from his parents. The Appellant did not attend the marriage of PW5. Only Ruldu Ram, Lakshmi Devi and Santosh attended the marriage of PW5 on 6.4.1998 in village Kunwari, District Hisar. On 8.4.1998, they had returned to their village. Admittedly on 9.4.1998, the dead body of Lakshmi Devi was found lying on a cot in the house of Ruldu accused.

22. Meaning thereby, the death of Lakshmi Devi was not disputed. The prosecution claimed that on 9.4.1998, PW5 had gone to village Kakrodh and noticed the dead body of Lakshmi Devi lying on a cot. He returned to his village and informed his father and uncle that accused Ruldu Ram had committed the murder of his wife Lakshmi Devi by strangulating her neck with a rope. On the other hand, as per

defence version set up by main accused Ruldu Ram was that he was not present in the house on the date of occurrence and his wife committed suicide.

23. Be that as it may, all the main allegations of harassment regarding quarrel (motive), emanating from the record as discussed here-in-above, are against Ruldu Ram accused, who is not Appellant before us. Therefore, we are only concerned with the implication of the Appellant in this regard.

24. Possibly, no one can dispute that the cardinal fundamental principles and basic rules of criminal law/jurisprudence have to be kept in focus while deciding such criminal cases. Some of these are that the absolute onus is always on the prosecution to prove its case beyond any reasonable doubt. The accused cannot possibly be convicted without any legal substantive evidence as the evidence is essential element in the criminal proceedings, notwithstanding the seriousness of the allegations alleged against the accused. The criminal proceedings require strict proof of guilt. It is the evidence, on the basis of which, the decision of a criminal court is based and is the requirement of criminal justice. Otherwise, in the absence of the same, the courts have no option but to record an order of acquittal howsoever painful the same may be.

25. In the instant case, the perusal of the evidence on record would reveal that the main accused Ruldu Ram was residing separately with his wife Lakshmi Devi (deceased) for the last 21/2 years before the present occurrence. All the allegations of demand of money, harassment with the deceased and regarding the quarrel (motive) are attributed to accused Ruldu Ram only, because the Appellant even did not attend the marriage of PW5 (motive part), which gave rise to origin of the occurrence. The dead body was found in the house of Ruldu accused.

26. Such thus being the legal position and evidence on record, now the core question, that arises for determination in this appeal, is as to whether the prosecution has proved the culpability of the Appellant by producing cogent evidence or not?

27. Having regard to the rival contentions of the learned Counsel for the parties, we are of the considered opinion that the argument of the learned Counsel for the Appellant that the story of the prosecution is highly improbable, has considerable force. PW5 claimed that he reached the house of the accused at 10/11 A.M. on 9.4.1998. According to PW3, the Rigor Mortis in both lower limbs and post mortem staining were present on the dead body of the deceased. The time elapsed between the injury and death was immediate and between death and post mortem was 18 to 36 hours. That means, the death had occurred some where in the evening of 8.4.1998 or early intervening night of 8/9.4.1998. Therefore, it is highly improbable to believe that after murdering Lakshmi Devi, the accused would keep her dead body till the arrival of PW5 at 10/11 A.M. on 9.4.1998. In that eventuality, they would have cremated the dead body in the night or in any case, in the early morning itself.

28. The matter did not rest there. The case of the prosecution is that the main accused Ruldu Ram caused the death of his wife Lakshmi Devi by strangulating a rope around her neck. There was no necessity or occasion for the Appellant to catch hold of the hands of the deceased. Besides it, no evidence of motive or malice against the Appellant is forth coming on record. If that is so, then the natural conduct of the Appellant would be, to prevent his brother Ruldu Ram from the commission of the crime, instead himself participating in it as claimed by the prosecution. So much so, PW8 has only stated that the Appellant at the first instance told him that his brother Ruldu Ram had committed a mistake and he helped him in this regard. Moreover, it is somewhat difficult to believe that the accused, who are residents of village Kakrodh, District Jind, would go to PW8, to make extra judicial confession, who is a resident of village Kunwari, Distrit Hisar, with whom the complainant remained his "Seeri". If the sequence of events narrated here-in-above are put together, then the possibility of false implication of the Appellant in the crime in question, cannot possibly be ruled out, under the present set of circumstances. Hence, the prosecution version is highly improbable and does not inspire confidence.

29. Not only that, the exact date and time of the occurrence is not forth coming on record, even there is no direct evidence on record to prove the complicity of the Appellant and the prosecution version only revolves around the circumstantial evidence. The Hon"ble Apex Court in case Bablu alias Mubarik Hussain v. State of Rajasthan 2007 (1) R.C.R. 296, after considering approximately entire case law on the subject, it was ruled that when a case rests only on circumstantial evidence, the evidence led against the accused must satisfy the following tests:

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

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

c) 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 d) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than 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;

e) if the evidence is reasonably capable of two inferences, the one in favour of the accused must be accepted;

f) circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances;

g) where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

30. As is evident from the evidence on record of the present case, the only circumstantial evidence pressed into service by the prosecution against the Appellant, is the extra judicial confession made by the main accused Ruldu Ram and the Appellant, before PW8 Dhup Singh, Sarpanch of village Kunwari, District Hisar, while the accused are residents of village Kakrodh, District Jind. In this respect, PW8 stated that about 11/11/2 months ago, the accused had come to his house. Ruldu Ram accused said that they had killed Lakshmi and he should help them. According to PW8, main accused Ruldu Ram told him that there was an exchange of hot words between him on the one hand and Puran and his family members on the other hand in the marriage of Roshan Lal and they returned to his house in protest leaving the articles/gifts there, which were offered to them. Lakshmi quarreled with them on the ground that they had insulted her parents at the house of Nathu. PW8 maintained that Ruldu had also told him that he tried to strangulate Lakshmi by putting arope around her neck but in the meantime, Tejpal reached there and caught hold of the hands of Lakshmi. Ruldu then tightened the rope around Lakshmi's neck and she died.

31. The statement of PW8 further proceeds that thereafter Tejpal accused said that his brother had committed a mistake and he had helped him in doing so by catching hold of the hands of Lakshmi at the time of strangulation. Tejpal also requested him to help them in this case. In other words, the statement of PW8, with regard to extra judicial confession of the Appellant, is as vague as anything as his entire statement only inculcate the complicity of main accused Ruldu Ram. Only solitary vague one line statement of alleged extra judicial confession, emanating from the statement of PW8, is not sufficient to prove the guilt of the Appellant in the absence of any cogent evidence on record in this respect.

32. Not only that, the statement of PW8 against the Appellant is as vague as anything and even it is highly improbable to believe as well, that the Appellant, who is a resident of village Kakrodh, District Jind, would go to village Kunwari, District Hisar to make extra judicial confession before Dhup Singh Sarpanch, particularly when PW8 admitted in his cross-examination that Puran complainant had been his Seeri few years ago. Therefore, no implicit reliance can be placed on the statement of PW8, as regards the involvement of the Appellant is concerned in this relevant connection.

33. Moreover, the statement of PW4 is only to the effect that on return from the house of the accused, Roshan told them that Lakshmi had been killed. Sequel, PW5 maintained that on 9.4.1998, he went to the house of the accused alongwith clothes etc. at about 10/11 A.M. and found that the dead body of Lakshmi was lying on a cot and some ladies were sitting outside. On being enquired by him, Santosh said that

Lakshmi had been killed. He then saw that Ruldu and Tejpal accused were coming out of the room of the house of Ruldu Ram, where the dead body of Lakshmi was lying. The statement of PW9 is also to the same effect that on return, Roshan told him that Lakshmi was lying dead at the house of the accused. The hearsay evidence of PW4, PW5 and PW9 would not come to the rescue of the prosecution, as regards the complicity of the Appellant in the indicated crime is concerned. So much so, these witnesses did not raise an accusing finger against the Appellant in this relevant connection. There is no other evidence on record to prove the charge against the Appellant as well.

34. This is not the end of the matter. The prosecution claimed that the marriage of Santosh, the real sister of the deceased, was solemnized with the Appellant. PW5 admitted that Santosh told him that Lakshmi had been killed. Likewise, PW9 admitted in his cross-examination that when they reached the house of the accused alongwith the police, Santosh was present near the dead body of Lakshmi, but the police did not make any inquiry from her (Santosh) and on being asked by them, Santosh said that Lakshmi had been killed by Ruldu. In other words, even Santosh has completely ruled out the participation of the Appellant in the commission of the crime. So much so, the prosecution did not examine the material witness Santosh in the Court, who could throw light on the origin of the occurrence and complicity of the Appellant in the commission of the crime. Meaning thereby, the prosecution has withheld the best possible evidence, for the reasons best known to it and in that eventuality, the legal adverse inference against the prosecution is inevitable in this behalf.

35. As indicated earlier, there is not an iota of cogent circumstantial evidence against the Appellant and no implicit reliance can be placed on the solitary vague statement of PW8, witness of extra judicial confession and the Appellant cannot possibly be convicted on such type of circumstantial evidence. It is now well settled rule of circumstantial evidence that each one of the circumstances has a complete chain to connect the Appellant with the commission of crime and has to be established beyond doubt and all the circumstances put together must lead to the only one inference and that is of the guilt of the Appellant. As discussed here-in-above, the only circumstantial evidence of extra judicial confession alone is not sufficient to prove the guilt of the Appellant in this relevant connection. The evidence brought on record by the prosecution is not reliable and trustworthy.

36. Thus, it would be seen that if the fact of improbability of prosecution story, absence of direct evidence, insufficiency of even circumstantial evidence and totality of the other facts and circumstances, emanating from the evidence on record, as discussed here-in-above, are put together, then the conclusion is inescapable and irresistible that the evidence brought on record by the prosecution completely falls short as is required to prove a criminal charge. In the instant case, the prosecution has miserably failed to connect the Appellant with the commission of crime in

question. Therefore, we are of the considered view that the trial Judge fell in legal error in convicting the Appellant in the absence of any cogent circumstantial evidence on record and he deserves to be acquitted in the obtaining circumstances of the case.

37. In the light of the aforesaid reasons, the instant appeal is hereby accepted, the impugned judgment of conviction and the order of sentence qua the Appellant are set aside. Resultantly, the Appellant is acquitted of the charge framed against him.

38. Needless to say, the compliance and procedural consequences would follow accordingly.