
(2013) 10 P&H CK 0310

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 885-DB of 2008 and Criminal Revision No. 189 of 2009

Ravinder and Others

APPELLANT

Vs

State of Haryana
 Dalip Singh Vs Ravinder and Others

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 P&H CK 0310

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : J.S. Bedi and Mr. Munish Soni, for the Appellant; Shubhra Singh, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Fateh Deep Singh, J

1. Both these matters i.e. Crl. Appeal No. 885-DB of 2008 by the convict-appellants as well as Crl. Revision No. 189 of 2009, preferred by the complainant having arisen out of the same very judgment and order of sentence dated 10.11.2008/15.11.2008 passed by the Court of learned Additional Sessions Judge, Gurgaon in case bearing FIR No. 143 dated 17.08.2006 under Sections 302/201/149/34 IPC, Police Station Pataudi being an outcome of same very findings, are being disposed of by this common judgment. The marriage between Sanjay Kumar aged around 32-33 years (now deceased) employed in the Indian Navy and appellant-accused Suman, took place on 18.02.1999 out of which a son named Lakshay was born to the couple. On account of certain matrimonial wrangling, Suman (also referred as Suman Devi) had left her husband on the pretext that her maternal uncle was unwell and in spite of endeavours of the husband that they would go together after securing leave but the wife left Mumbai where they were residing for her parental house. Almost after 15 days, the husband intimated his family to bring back Suman as he was coming on leave but as per the allegations of complainant Dalip Singh father of the

deceased, contained in his statement Exhibit PU, the wife refused and so her parents, on account of which, the complainant himself went to take back his daughter-in-law but all the accused refused and threatened that he should leave their house, else some mishap might happen and also threatened that in case Sanjay Kumar ever visited their house, he would not go back alive. It is alleged by the complainant that on 10.08.2006, deceased came on leave and on 16.08.2006, the deceased told his father that he was going to her in-laws house in village Haily Mandi to bring back his wife and son and inspite of warning by the father that earlier he had sent Harpal Singh Ex-Sarpanch to the house of the accused but they have declined and rather misbehaved with him and after telling that being the son-in-law, accused would not harm him and went to the house of his in-laws at Haily Mandi around 3.30 PM. and the same very evening around 8.30/9.00 P.M., Santosh mother of Suman made a telephonic call to the complainant as to why they had sent Sanjay Kumar and they should call him back, else might lead to an ugly situation. On 17.08.2006 around 9.30 A.M., Naresh PW-9 went to the house of the in-laws of the deceased to know the well being of Sanjay Kumar and on reaching, telephonically informed the complainant that he had found Sanjay Kumar dead lying in a park near Syndicate Bank adjoining water supply tube-well of village Haily Mandi. After the complainant and others rushed, they discovered bluish mark on the chest of the deceased with blood oozing out from his mouth and suspected that his son had been murdered after the accused have connived with each other. SI/SHO Bhagat Ram on receipt of telephonic information went to the place where the complainant met him and after recording his statement sent the ruqa Exhibit PU/1 through Constable Subhash Chander, leading to the registration of the FIR.

2. The Investigating Officer prepared inquest report Exhibit PS as well as rough site plans of the place of occurrence Exhibits PV, PV/1 where the dead body was found and where the occurrence has taken place respectively and recorded statements of the witnesses and handed over request for post-mortem Exhibit PR along with the dead body and police papers whereby Dr. Subhash Sindhu PW-8 conducted post-mortem examination and gave his report Exhibit PT as to the cause of death. Meanwhile, from near the dead body shoes, socks were recovered, which were sealed into parcel and from the pocket of the deceased, a mobile phone was got recovered, which all were taken into police possession through memo Exhibit PQ. Meanwhile, supplementary statement of the complainant Exhibit PR was got recorded and from the place of occurrence blood stained earth was taken into possession in a sealed parcel through memo Exhibit PP and after post-mortem examination of doctor, handed over the belongings of the dead body, which were taken into possession after preparing its parcel through memo Exhibit PO.

3. The accused were formally arrested and while in police custody accused Ravinder Singh @ Bittu was interrogated, who suffered disclosure statement as to how the deceased was killed and that he has kept concealed ATM card of HDFC bank belonging to the deceased in the house of which he only knew and

got the same recovered and his disclosure statement Exhibit PS was got recorded and on the basis of which, accused led the police party to the disclosed place and got the articles recovered, which were taken into police possession through memo Exhibit PD. Similarly, accused Santosh during her police custody, on questioning made a disclosure statement as to the manner of the occurrence leading to the death of the deceased and the fact that she has kept concealed the purse of the deceased in a box of her house of which she only knew and can get the same recovered and her statement Exhibit PT was reduced into writing and, therefore, accused led the police party to the disclosed place and got the articles recovered, which were taken into police possession through memo Exhibit PC and similarly accused Suman while in police custody stated that she has kept concealed the ATM card of her husband issued by the State Bank of India in a room of the house in a trunk of which she only knew and can get the same recovered and her disclosure statement Exhibit PU was recorded and thereafter she led the police party to the disclosed place and got the articles recovered, which were taken into police possession through memo Exhibit PB. Similarly, accused Ram Kishore suffered a disclosure statement Exhibit PX as to the manner in which deceased was put to death and also demarcated the place where the deceased was put to death by way of memo Exhibit PX/1 and rough site plan of these places Exhibit PW was prepared by the Investigating Officer followed by scaled site plan Exhibit PQ.

4. During the course of the events, the articles were sent to the laboratory and on receipt of Forensic Science Laboratory reports Exhibits PA, PA/1 and on presentation of challan, the accused were charge-sheeted by the learned trial Court and all the accused had refuted the charges and claimed trial.

5. The prosecution in order to establish its case examined PW-1 HC Jagdish Rai, PW-2 Constable Jagdish Kumar, who both proved the safe deposit of the parcels and their deposit in the laboratory, PW-3 Rakesh Kumar, Photographer detailed the fact of having clicked the photographs as Exhibits P1 to P8 and their corresponding negatives Exhibits P-9 to P-15, PW-4 Satish Kumar did not support the prosecution story and was declared hostile and through Constable Subhash Chander PW-5 got proved the post-mortem examination of the deceased. Harpal Singh PW-6 testified the extra judicial confession made by the accused followed by the deposition of Sarwan Kumar, draftsman PW-7, who proved the scaled site plan, PW-8 Dr. Subhash Sindhu proved the PMR whereas PW-9 Constable Satbir Singh brought about the special reports, PW-10 Naresh had detailed the discovery of the dead-body of the deceased and, thereafter, complainant Dalip Singh father of the deceased stepped into the witness box as PW-11 and reiterated his allegations and lastly SI Bhagat Ram, Investigating Officer deposed as PW-12 bringing about his investigation.

6. The prosecution evidence was put to each of the accused in the statement u/s 313 Cr.P.C., who denied the same and in their defence examined DW-1 Ramesh Chander, who proved the alibi of the accused that at the time of this occurrence

they were attending the cremation of Krishna Devi, sister of accused Ram Kishore and DW-2 Constable Tej Singh has proved the complaint made by the wife against the husband and, thereafter, DW-3 Raj Singh, husband of Krishna Devi detailed that the accused was present at the time of this occurrence at the last rites and ceremonies of her wife to bring forth the plea of alibi of the accused. It is, thereafter, the impugned findings were recorded and that is how the convict-appellants are before this Court in this appeal and the complainant Dalip Singh has sought to seek enhancement of the sentence.

7. After hearing the arguments of the counsel representing the parties, it is duly admitted as to the marriage of Sanjay Kumar deceased with appellant-convict Suman and the fact that out of this matrimonial alliance, a child was born to the couple. The death of the deceased could not be displaced having occurred in village Haily Mandi, the parental village of Suman. The Investigating Officer SI Bhagat Ram PW-11 has testified that the dead body was recovered from the place depicted in the rough site plan Exhibit PV whereas the murder has taken place, which is duly illustrated in rough site plan Exhibit PV/1 and this police official has high-lighted the recovery of blood stained earth from the place where the dead body was got recovered and which parcel of the blood stained earth was taken into police possession through memo Exhibit PB and it is specifically mentioned therein that blood had oozed out of the mouth of the dead-body and after the post-mortem examination, the belongings of the dead body were taken into police possession through memo Exhibit PO and as per the deposit of the parcels through PW-1 HC Jagdish Rai and PW-2 Jagdish Kumar, the blood stained earth contained the human blood and the shirt of the deceased is also shown to be stained with human blood as shown from the Forensic Science Laboratory reports Exhibits PA and PA/1 and together with the inquest report prepared by the Investigating Officer bears out the presence of liquid blood and that shoes and socks of the deceased were recovered from near the dead body by way of memo Exhibit PQ. The post-mortem examination has been got conducted on the police request Exhibit PR by way of report Exhibit PT, which further illustrates that it was a homicidal death. It has been strongly contended by Mr. J.S. Bedi, counsel for the appellants that it is a death for which there is no direct evidence and it cannot be scribed to the accused for being responsible for the death of the deceased and for which the testimony of PW-8 Dr. Subhash Sindhu is very material. It is the own stand of the defence that the couple had some sort of matrimonial dispute as has been argued by the learned State counsel. On 17.06.2006 an application was moved by the accused Suman which DW2 Constable Tej Singh witness has proved as Exhibit DJ and going through it, it adequately reflects that the wife had levelled allegations against her in-laws and husband for harassing her for dowry and though to the query of the Court, the learned defence counsel could not high-light when it was sent, which on bare perusal of the application reflects to have been made after the wife claims to have returned to her parental house and though the witness states that it was on 17.06.2006, this application was moved and when confronted in the cross-

examination has failed to give the serial number of the entry and is unable to state if any enquiry was held thereon or not and has proved in re-examination copy of this entry as Exhibit DK. In the light of this evidence, it is highly suspect that it is an ante-dated defence set up, as it is therein this application, it finds mention that the husband might commit suicide and in the absence of any official, who had received complaint having been examined or in the absence of any blemish evidence worth the name, it certainly is of doubtful antecedents.

8. Thus, to probe the likely causes of this death, the deposition of PW-8 attains all the more importance and the examination-in-chief of the doctor shows that at the time of postmortem examination, the doctor has observed presence of semen on the underwear, faecal matter from the anal region, blood mixed froth coming out from both nostrils as well as presence of blood in the mouth cavity and pathological hemorrhage was seen over upper chest and the eyes were congested. Further more, the doctor has observed three abrasions over right knee, left knee and right foot and there was no apparent external mark of injury over the neck. Thus, completely rules out a case of suicide. The doctor had illustrated that on dissection of the neck, a contusion mark of size 3x1.5 cm present on the right side of the neck, another contusion mark of size 2x1 cm was present in the thyroid area and two contusion marks 1x1 cm each on left side of the neck, clearly establishes use of force in this manual strangulation as defined by this witness. The doctor had observed that on further dissection trachea was found with small amount of liquid blood and has observed a haematoma over right thyroid cartilage and both the lungs were congested and froth was found on the cut section and has opined the death due to asphyxia caused by manual strangulation and rather in his cross-examination, the doctor has volunteered that the trachea and eyes were congested which is a sign of pressure, are matters which have a bearing on the outcome of this case. In the text book of Medical Jurisprudence and Toxicology 24th Edition 2011 by Modi, in chapter 19 page 453 has opined that in cases of death due to asphyxia appearances usually show that the genital region may be congested and there may be discharge of urine, faeces and seminal fluid, certainly adds to the case of prosecution and further adds there is a peculiar symptom of pathological hemorrhage under conjunctivae and neck which is precisely in this case and together with the fact that the doctor had also observed pathological hemorrhage over the upper chest adds to the fact that there has been manual strangulation while sitting on the chest of the deceased.

9. It has very well come in the testimony of the complainant PW-10 Dalip Singh, father of the deceased that the accused had threatened that in case the deceased visited their house, something unfortunate would happen and it was repeated by accused Santosh, the mother-in-law after the deceased went to the house of the in-laws while telephoning the complainant demonstrate as to what was at the back of the mind of the accused. The recovery of the ATM card from accused Suman, a purse from accused Santosh and another ATM-cum-debit card from accused Ravinder @ Bittu on the basis of their disclosure statements

Exhibits PB, PC and PD respectively further adds to the woes of the defence and there is no worthwhile explanation given by the accused for these recoveries which have been made in consequence of the information supplied by the accused and from their exclusive conscious possession.

10. Ms. Shubhra Singh had laid much stress on the extra-judicial confession Exhibit PR made by the three accused before PW-6 Harpal Singh and has submitted that being a Sarpanch was a respectable man and his testimony cannot be put to doubt, could not be successfully controverted by Sh. J.S. Bedi, learned counsel for the appellants and in no uncertain terms had further stated that it was on the asking of the complainant, this witness had tried to reconcile the dispute and on 14.08.2006 few days prior to this occurrence had met the father-in-law and mother-in-law of the deceased and tried to made them understand and rather accused had threatened that they would not leave alive their son-in-law and it was in his presence the Investigating Officer had lifted the blood stained earth through memo Exhibit PP, shoes Exhibit P-19 and socks Exhibit P-22 as well as mobile phone Exhibit P-23. The witness has clearly stated that all the three accused, namely, Santosh, Suman and Ravinder had come to him on 22.08.2006 and first of all accused Ravinder had confessed before him that since he was having illicit relations with Suman, they have committed a heinous crime and has enumerated it, that thereafter accused Suman and then accused Santosh narrated the confessions one by one and this witness after being declared hostile, when put to questions, had admitted that the accused confessed that during the intervening night of 16-17 August, 2006 as per the pre-planning, when Sanjay had come to their house Ram Kishore and Santosh caught hold of Sanjay Kumar by the legs while he was lying on the cot whereas Suman caught hold of him by the hands whereas accused Ravinder while sitting on the chest of the deceased strangled him and, thereafter, his dead body was kept near the tubewell room of the Public Health Department and it was this witness who has brought them before the police though it has been agitated by the appellants' counsel that this witness is related to the complainant and purely because he is an interested witness, does not mean that his testimony needs to be out-rightly rejected and thus his evidence needs to be explored to adjudge the credibility of this witness. Besides the fact that it has very well come in the evidence that this witness has tried to broker peace between the two sides and thus was a person in whom both the sides have faith and confided, certainly rebuts these submissions of the learned counsel.

11. The deposition of PW-8 Dr. Subhash Sindhu clearly substantiates the facts narrated by the accused in their confessions that it was a case whereby the deceased has been strangled by manual means. It is highly unacceptable in the absence of any surrounding evidence that the deceased has committed suicide and in view of the expert foregoing observations relied, it certainly satisfies judicial conscience as to the deceased having been put to death by manual strangulation.

12. The mere fact that illicit relations have not been established being a motive of this murder. As per the law laid down in State of Himachal Pradesh Vs. Jeet Singh, and State of U.P. Vs. Babu Ram, cases based on circumstantial evidence, motive is not an essential constituent and it cannot be accepted in the absence of motive that no murder has taken place besides it has very well come in the extra-judicial confession of the accused as to the relationship of Suman with the son of her maternal uncle accused Ravinder @ Bittu and further more, there had been repeated threats from the side of the accused that in case the deceased dared to visit the house of his in-laws, serious repercussions would ensue. It is well enshrined principal of law that where an accused sets up a plea of alibi in terms of Section 103 of the Evidence Act. It is the accused, who has to prove it as such has been laid down in the case of State of Haryana Vs. Sher Singh and Others, and in this case through the defence witness DW-1 Ramesh Chander, the accused have tried to rake up plea of alibi, being not available in the village having gone to attend the cremation of Krishna Devi sister of accused Ram Kishore, whose death has been proved by this witness through Exhibit DH and through DW3 Raj Singh husband of deceased Krishna Devi has sought to prove the presence of all of these accused at the cremation and in his cross-examination accepts that he has not brought these facts to the notice of the police earlier thus comes to establish that he is belated after thought witness who is brother-in-law of accused Ram Kishore and more so, accepts that accused had left the home of this witness after the ceremonies, are matters which certainly do not come to the aid of the defence.

13. Though there is a little delay of almost 5 hours between discovery of the dead body and the registration of the FIR but such a minimal delay is hardly of any consequence and it is not a Rule of law that every delay is detrimental to the prosecution and the Court has to go beyond to examine the likely causes of such a delay and nothing has been brought on the record or to the knowledge of this Court on behalf of the appellants that an embellished account has come up from the mouth of the complainant since the dead body has been recovered near the house of the in-laws. Thus, all the accused were under legal obligation in terms of Section 106 of the Evidence Act to explain under what circumstances and the manner, which led to this death of Sanjay Kumar. More so, the disclosure statements of the accused Exhibits PS, PT, PU, PX and memo of demarcation Exhibit PX/1 made by the accused are relevant facts which are supported by the corroborative evidence so collected during the investigations coupled with the recovery of the articles of the deceased from the exclusive and conscious possession of accused Ravinder @ Bittu, Santosh and Suman proved by way of Exhibits PB, PC, PD certainly irrefutably is a pointer towards the guilt of the accused and coupled with the testimony of PW-10 Naresh that when he went to the house of the accused, he found it locked on the next early morning of the occurrence i.e. 17.08.2006 around 10/10.30 A.M., are matters which shows guilty mind in terms of Section 8 of the Evidence Act. To add to the discomfort of the defence is the statement of Satish Kumar PW-4, who in his examination-in-

chief had irrefutably testified having seen the deceased in the company of the accused at the house of the accused, are matters of great relevance and though this witness has been declared hostile but in view of settled position of law, testimony of a hostile witness cannot be thrown over board and where it is corroborated by other evidence, the Court can rely upon it and rather in his examination by the State by way of question answer reiterates the fact that he had seen the accused at their house at 10. P.M. on 16.08.2006 along with the deceased, certainly puts the defence in a bad light and what is more baffling that witness has also established the fact that it was in his presence, the three accused on the basis of the disclosure statements have got the articles Exhibits P16 to P-18 of the deceased recovered from their exclusive possession as well as pointed out the place by way of room where they have murdered the deceased certainly becomes relevant piece of evidence.

14. The ratio cited on behalf of the appellants' counsel in cases of Hari Kant and another Vs. State of Haryana, Arup Bhuyan Vs. State of Assam, , Dr. Sunil Clifford Daniel Vs. State of Punjab, and Sahadevan and another Vs. State of Tamil Nadu, do not come to their support on account of factual disparity and the fact that each and every piece of evidence is corroborated by other means.

15. The formal witnesses PW-1, PW-2 have proved the safe dispatch and deposit of the parcels in the laboratory. PW-3 has proved the photographs. PW-9 has proved the dispatch of the special reports and the Investigating Officer PW-12 has fully established the investigations and the evidence collected by him during the same and all these pieces of evidence brought in the investigations corroborate the stand of the complainant PW-11. Thus, the chain of circumstances stands completed in entirety and corroborates the prosecution story. Learned trial Court has discussed at length, the evidence proved on the record, which is beyond any doubt and is of impeccable veracity. Thus, findings of the impugned judgment are certainly consistent with the hypothesis of the guilt of the appellants, which we are not inclined to disturb and the appeal of the appellants being hopelessly without any merit stands dismissed.