

(2015) 04 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 370 of 2011 and 36 of 2012

Santosh Kumari

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 173, 313
Penal Code, 1860 (IPC) — Section 120-B, 302, 34, 365, 372

Citation : (2015) 04 SHI CK 0037

Hon'ble Judges : Sureshwar Thakur, J.;Rajiv Sharma, J.

Bench : Division Bench

Advocate : Amit Singh Chandel, for the Appellant; P.M. Negi, Deputy Advocate General and Ramesh Thakur, Assistant Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—Both these appeals are arising out of a common FIR and disposed of by a common judgment.

2. The instant appeals are directed against the judgment, rendered on 28.9.2010, by the learned Sessions Judge, Una, H.P., in Sessions case No. 1 of 2010, whereby, the learned trial Court convicted and sentenced the accused No. 1 to 3/appellants to undergo rigorous imprisonment for life and to pay a fine in a sum of Rs. 5,000/- each and in default of payment of fine to further undergo simple imprisonment for a period of two years for the commission of offences punishable under Section 302/34 I.P.C.

3. The facts, in brief, are that Ms. Jahida Begum (PW-13), had left her house for the house of sister of her father situated in village Dalgan, (Assam) on 12.4.2008, at the age of 16 years. When PW-13 had been on the way to her house situated in village Nagganjai, One Ainul Haq had proposed PW-13 for marriage and had taken her to Kharupetia. Shahjahan Ali and Ainul Haq had lateron taken her to village Damdama of District Nalbari and had detained her at

the house of appellants No. 2 and 3, where Ainul Haq had committed sexual intercourse with her without her consent on the intervening night of 12.4.2008 and 13.4.2008. On the following day, appellants No. 2, 3 and Shahjahan Ali had taken her to Railway station Rangia, where they boarded train for Delhi. Thereafter PW-13 had been taken to village Baliwal in District Una, H.P. to the house of appellant No. 1, where she had been informed by Appellants No. 2, 3 and Shahjahan Ali that she stood sold to them by Ainul Haq for a sum of Rs. 10,000/-. Lateron appellant No. 1 had paid a sum of Rs. 20,000/- to appellants No. 2, 3 and Shahjahan Ali. Appellant No. 1 was stated to be engaged in the sale of girls of Assam, Eastern States in Una and nearby area of Himachal Pradesh. Appellant No. 1 had sold PW-13 for a sum of Rs. 23000/- to PW-6. PW-13 had refused to accompany PW-6 and had started crying for life. Accused No. 1 Santosh Kumari had migrated to Himachal Pradesh from Assam and had settled as wife of Shri Bhajan Singh son of Shri Hamam Singh. Shri Bhajan Singh had found PW 13 minor and had opposed her sale to PW-6. Santosh Kumari with the help of appellants No. 2, 3 and Shahjahan Ali had wrongfully confined PW-13 in a room of her house for about a week. Shri Bhajan Singh had offered help to PW-13 and at night he had opened the lock of her room and had taken her to Railway station, Una. When appellant No. 1 had noticed her husband and PW-13 missing she along with appellants No. 2, 3 and Shahjahan Ali left for Railway Station, Una and boarded the train and had reached Delhi. After reaching Delhi shri Bhajan Sing had asked PW-13 to wait for him at the platform. Shri Bhajan Singh had gone to the ticket window to buy a ticket from Delhi to Gauhati for PW-13. In the meantime, appellant No. 1, 2, 3 and Shahjahan Ali had traced PW-13 at the Railway Station and appellant No. 1 had started beating PW-13. When Shri Bhajan Singh had returned after buying ticket, appellant No. 1 had slapped him. Santosh Kumari had administered multiple blows with her footwear on the person of Shri Bhajan Singh. PW-13 had cried for attracting the attention of Railway Police. On this, Santosh Kumari told the police that PW-13 is suffering from mental disorder and was required to be controlled. PW-13 was under shock, therefore she could not represent to Railway police. Appellant No. 1, 2, 3 and Shahjahan Ali had taken PW-13 from Delhi to Una in a train. Shri Bhajan Singh had also accompanied the accused persons to his house. Shri Bhajan Singh and his elder brother Shri Baldev Singh (PW-2) had been putting up in their house comprising two rooms with common kitchen. Shri. Baldev Singh was a rustic illiterate villager. He had not been married. Shri Baldev Singh had left his house on 26.4.2008 in the morning for cutting wheat crop of Smt. Taro Devi in village Badhera. When PW-2 had left, the accused persons, Shri Bhajan Singh and PW-13 had been present in the house. PW-2 had returned to his house on 30.4.2008 and had found the room of his younger brother locked and appellant No. 1 was not visible. PW-2 had started residing in the open outside the house since it had been summer. It had been alleged that appellants No. 1, 2, 3 and Shahjahan Ali had compelled shri Bhajan Singh to lie down in the room of his house and had thereafter tied him. PW-13 had been separately tied in the room. The accused persons had started causing hurt to PW-13. Shri Bhajan Singh had

asked the accused to spare the girl as she had not been at fault. The accused persons were stated to have taken liquor. Thereafter accused persons were stated to have picked up scythe Ex. P-5 and had administered multiple blows thereof on the neck of Shri. Bhajan Singh. Skull had been separated from the rest of the body. The appellants and Shahjahan Ali had also caused injuries to PW-13. PW-13 had turned unconscious. The accused persons had stacked the dead body of Shri. Bhajan Singh in a jute bag and had dumped the same in one corner of the room. PW-13 had been picked up and had been dumped in the nearby forest. A village woman had noticed PW-13 on the next morning and had taken her to her house. PW-13 was got medically treated. She had complained against the murder of Shri Bhajan Singh to the local police. It appeared that the local police due to ignorance of PW-13 had not been able to locate the house of appellant No. 1 and her husband. Later on the custody of PW-13 had been handed over to PW-6. PW-6 had wrongfully confined PW-13 in his house for about a month or so. One day PW-13 was sought to be taken on a scooter to the market at Una by PW-6. When PW-13 had noticed some policemen, she had jumped from the scooter and had complained against her wrongful confinement. Appellant No. 1 had returned to her house on 10.5.2008. She had asked PW-2 to break open the lock of her room as she had lost key thereof. PW-2 had cut the lock Ex. P-2, with blade. Foul smell had been emanating from the room. PW-2 noticed the dead body of his brother packed in gunny bag in the corner of the room. PW-2 had treated appellant No. 1, responsible for the murder of his brother and had complained against her to PW-1 Tarsem Singh, Pradhan. PW-1 had then informed to the police Station Haroli. PW-12 Shri Kapoor Chand SI along with his men had rushed to the house of deceased. He had recorded statement Ex. PW-1/B under Section 154 Cr.P.C. of PW-1. Crime under section 302 I.P.C. stood registered vide FIR Ex. PW-10/B. Appellant No. 1 had been arrested by the police. On interrogation by the police, she had made a disclosure statement comprised in Ex. PW-1/D. PW-12 in the presence of PW-1 and Updesh Kumar had recovered scythe Ex. P-5 vide recovery memo Ex. PW-1/F on the disclosure statement of appellant No. 1. Shri Jalalu Din father of PW-13 had recorded a missing report to the police Station Dalgaon. Shri Jalalu Din along with Assam police had reached Una and had taken away PW-13. Crime under Sections 120-B, 365, 376, 372/34 I.P.C. stood registered against appellants and Shahjahan Ali (accused No. 4) and Ainul Haq at police Station Dalgaon vide FIR No. 249/2008. It had been alleged that appellant No. 1, 2, 3 and Shahjahan Ali in furtherance of their common intention had committed murder of Shri Bhajan Singh during the period from 26.4.2008 to 1.5.2008. After completion of investigation, SHO police Station Haroli had prepared final report under Section 173 Cr.P.C. against the accused persons and on 8.8.2009 had instituted in the court of Chief Judicial Magistrate, Una. The learned JMIC (II) vide order dated 22.12.2009 had committed the accused person to the court of sessions.

4. The accused persons were charged, for, theirs having committed offence punishable under Section 302/34 IPC, by the learned trial Court, to, which they

pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 13 witnesses. On closure of prosecution evidence, the statements of accused, under Section 313 of the Code of Criminal Procedure, were recorded, in, which they pleaded innocence and claimed false implication. They chose not to lead evidence in defence.

6. On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against accused No. 1 to 3/appellants herein and accused No. 4 stood acquitted.

7. The accused/appellants, are, aggrieved by the judgment of conviction, recorded by the learned trial Court. The learned counsel appearing for the appellants has concertedly, and, vigorously contended, that, the findings of conviction, recorded by the learned trial Court, are, not based on a proper appreciation of evidence on record, rather, they are sequelled by gross misappreciation of the material on record. Hence, he, contends that the findings of conviction, be, reversed by this Court, in, exercise of its appellate jurisdiction, and, be replaced by findings of acquittal.

8. On the other hand, the learned Deputy Advocate General, has, with considerable force and vigour, contended that the findings of conviction, recorded by the Court below, are, based on a mature and balanced appreciation of evidence on record, and, do not necessitate interference, rather merit vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. Deceased Bhajan Singh was allegedly done to death by the accused. Darat Ex. P-5 was used by accused Majibur Ali and Habibur Rehman to inflict multiple blows on the person of deceased Bhajan Singh. PW-9 Dr. Daljit Singh, who conducted the post mortem examination on the body of deceased Bhajan Singh and proved Post Mortem Report comprised in Ex. PW-9/B, has, in his deposition deposed the factum of his having recorded in Ex. PW-9/B, the hereinafter extracted observations:-

"External Appearance:

Dead body of an old man 5"-5" wrapped in a plastic gunny bag. Pealed of hairs on scalp, skull was separated from the neck. Brain matter liquefied and eaten by maggots. Ribs were separated from the chest cage and muscles were liquefied. Heart eaten by maggots. Liquefied and blackish shunker lungs on left side seen. Abdomen is liquefied by putrifaction and pale colour intestine seen. Both upper limbs separated from shoulder joints and muscles are liquefied. Bones are seen. Lower limbs shows advance stage of putrifaction. Skin of foot was peeled off and the underlined muscles were absent. Maggots seen over the whole body. Neck muscles are liquefied and putrifaction seen with vertebra are exposed.

Cranium and Spinal Cord:

Peeled out hairs seen. Scalp muscles were putrified skull and vertebra of the cervical region are seen with putrification of muscles. The skull was separated from the body, eye eaten by maggots, mouth, pharynx eaten by maggots. The meninges are absent. The brain matter is liquefied and eaten by maggots due to advance stage of decomposition.

Thorax:

Walls eaten by maggots. The ribs and cartilages were apart as the muscles were liquefied pleura liquefied and absent.

Larynx and trachea liquefied due to putrification.

Right lung putrefied blackish in colour.

Left lung putrified blackish in colour.

Pericardium, heart, large vessels etc. absent due to eaten by maggots.

Abdomen:

Walls: Putrefied and muscles eaten by maggots.

Peritoneum and Liver: Putrefied

Mouth pharynx and esophagus and Bladder eaten by maggots. Stomach and its contents were liquefied, due to advance putrification.

Small intestines liquefied due to advance putrification Large intestine and their contents: pale and liquefied due to advance putrification

Spleen: absent and eaten by maggots.

Kidney: Absent and eaten by maggots.

Organs of Generation External and Internal: Liquefied right testicles seen and left side along with penis eaten by maggots.

Muscles, Bones and Joints:

Muscles of upper and lower limbs were reddish brown putrified. The underline bone were seen. Both hip joint and knee joint are in flexion and underline muscles were in advance stage of putrification. No fracture or dislocation seen."

11. However, during the course of his examination-in-chief, he has been unable to depose with firmness, qua the factor which caused the demise of the deceased. The deterrent in his unfolding a firm opinion qua the cause of demise of the deceased is comprised in the fact of the body of deceased Bhajan Singh being putrefied and eaten by maggots. Also the weapon of offence Ex. P-5 with which accused Majibur Ali and Habibur Rehman inflicted injuries on the body of the deceased was not put to this witness for eliciting an unequivocal opinion from him qua the fact of it having caused the purported injuries occurring on the body of the deceased. The star witness of the prosecution, who also happens to be an

eye witness qua the occurrence, besides an injured witness, is PW-13. Consequently, hers having rendered an ocular version qua the occurrence renders unnecessary and redundant any advertence to the deposition of the prosecution witnesses, other than the witnesses to recovery of Ex. P-5 and to the deposition of PW-2 before whom accused Santosh Kumari made an extra judicial confession qua her guilt. An incisive reading of the testimony of PW-13, especially of the apt and relevant portion, underscores the factum of hers having communicated therein the factum of the husband of accused Santosh Kumar having been delivered blows on his neck with darat Ex. P-5 by accused Habibur Rehman. She has also proceeded to depose that on the instigation of accused Santosh Kumari, wife of deceased Bhajan Singh, both accused Majibur Ali and Habibur Rehman had also proceeded to inflict multiple blows on the body of deceased Bhajan Singh. She has been firm in her deposition comprised in her examination-in-chief that blows with Darat Ex. P-5 were delivered on the neck of deceased Bhajan Singh by accused Habibur Rehman as also multiple blows were inflicted upon him by both accused Majibur Ali and Habibur Rehman and which blows sequelled his demise. She has been unequivocal in her deposition that the accused had caused injuries with a sharp edged weapon on the left side of her head and on her left leg. The said injuries were observed by the Court while recording her deposition on oath. She has deposed that after having witnessed the occurrence, wherein accused Majibur Ali and Habibur Rehman by their respective acts had done to death Bhajan Singh, the husband of accused Santosh Kumari, she fell unconscious. She was picked up by the accused and dumped in the nearby forest at night. One woman had been grazing her buffalo in the forest, had taken her to her house and had treated her. She deposed that she narrated the occurrence to the Medical Officer. Subsequently, she made a disclosure qua the occurrence before the police. Ultimately her custody was handed over by the police to a Punjabi boy, to whom she had been sold by accused Santosh Kumari. The relevant, apt and significant portion of the statement of PW-13, the eye witness to the occurrence, who was also injured by the acts attributed by her to the accused, unequivocally voices the factum of participation of the accused in the respective manners as denoted by her in the murder of deceased Bhajan Singh, husband of accused Santosh Kumari. However, the previous statement attributed to her, as, having been made by her before the Investigating Officer under Section 161 Cr.P.C., omits to record the factum of hers having witnessed the occurrence, consequently it is urged before this Court that PW-13 in improvement and in contradiction to her previous statement recorded in writing wherein she had omitted to divulge the factum of hers having witnessed the occurrence, renders her testimony on oath before this Court, whereby she made a disclosure qua the factum of hers having witnessed the occurrence, to be bereft of truth while constituting a contradiction or improvement over and upon her previous statement recorded in writing or its being hence ridden with inveracity. Even though, embellishments and improvements may have imbued her statement on oath with untruth nonetheless the mere fact of hers having improved or embellished upon her previous

statement recorded in writing may not give any leverage to the defence, to as such canvas for the acquittal of the accused, especially when during the course of her cross-examination by the learned defence counsel, the latter had omitted to confront this witness with the apt, germane and relevant portions of her previous statement recorded in writing which was purportedly improved and embellished by this witness while deposing in Court qua the occurrence. Absence of concert by the learned defence counsel to confront this witness during her cross-examination with the apt and germane portions of her previous statement recorded in writing fillips and fosters a very natural conclusion that this witness was hence precluded, to, while hers being subjected to cross-examination by the learned defence counsel qua those portions of her deposition on oath which had purportedly been improved or embellished upon by this witness, clarify whether she had, as a matter of fact, made such a statement before the Investigating Officer or its occurrence was a mere contrivance of the Investigating Officer. The omission on the part of the defence counsel to afford hence an opportunity to PW-13 to offer an explanation for sprouting of a purported improvement and embellishment in her deposition on oath, generates an inference that the statement of PW-13 purportedly made by her to the Investigating Officer was not recorded by the Investigating Officer in the manner as disclosed/stated by her to him. In aftermath, the ensuing and concomitant deduction which sprouts is that the purported improvement and embellishment hence as attributed to PW-13 cannot lend any strength to the contention of the learned counsel for the appellants that her deposition being hence ridden with improvement and embellishment over and upon her previous statement recorded in writing, renders it bereft of veracity. Rather omission on the part of defence counsel portrays acquiescence to the defence counsel to the version qua the occurrence propounded by her in her examination-in-chief. Moreso the above argument also falters in the face of previous statement attributed to PW-13 being an unsigned statement. For reiteration, the relevant improved or embellished portion having not been put to PW-13 by the learned defence counsel while cross-examining her renders the purported previous statement attributed to PW-13 to be hence a mere machination on the part of the Investigating Officer to, may be hence, give leverage to the accused. It is also connotative of a faulty investigation having been carried out by the investigating Officer. Obviously it in no way foists any strength to the arguments as advanced by the learned counsel for the appellants. Moreover, further corroboration to the deposition of PW-13 is lent by the deposition of PW-2 before whom one of the accused namely Santosh Kumari made an extra judicial confession qua the factum of her husband having been put to death and his body having been packed inside a jute bag. The extra judicial confession made by accused Santosh Kumari to PW-2 who is her brother-in-law acquires a hue of veracity especially given the fact that she is related to PW-2, hence, with the latter standing in the capacity of a confidante of accused Santosh Kumari to whom hence a credible and worthwhile extra judicial confession could have been made by accused Santosh Kumari, resultantly when PW-2 has with firmness deposed qua the factum of accused No. 1 having made

an extra judicial confession qua her guilt and which portion of his deposition in his examination in chief has remained un-shattered during the course of his having been subjected to the ordeal of an inexorable cross-examination by learned defence counsel. Consequently, the extra judicial confession made by accused Santosh Kumari before PW-2, her close relative, hence her confidante in whom she could have deposed faith for disclosing the truth, renders, as such, the extra judicial confession made by accused Sanotsh Kumari to be acquiring an indomitable fervor and strength. The recovery of weapon of the offence further connects the accused in the commission of the offences alleged especially in the face of the fact that the deposition of the eye witness to the occurrence PW-13, who has with vividity rendered an ocular account qua the occurrence has received corroboration from the testimony of PW-2 comprised in his deposition of accused Santosh Kumari having confessed her guilt before him. In aftermath, cumulatively when the aforesaid facets are construed in mutual entwinement and in conjunction with each other, the mere fact that Doctor PW-9 has been unable to depose qua the cause of demise of deceased Bhajan Singh or the weapon of offence Ex. P-5 having not been put to him, for eliciting from him the factum of its user at the instance of the accused, is rendered insignificant. The preponderant and eminent reason, also for the testimony of PW-9 while omitting to bespeak the factum of the injuries being noticed by him on the body of deceased to be attributable to the user of darat Ex. P-5, besides his omitting to pronounce upon the cause of injuries, not hence giving leverage to the accused besides the prosecution case being not engulfed with an aura of doubt, benefit whereof ought not to be given to the accused, exists in or is portrayed by the depositions of PW-13 and PW-2.

12. The summum bonum of the above discussion is that the prosecution has been able to adduce cogent and emphatic evidence in proving the guilt of the accused. The appreciation of the evidence as done by the learned trial Court does not suffer from any infirmity, or, perversity. Consequently reinforcingly, it can be formidably concluded, that, the findings of learned trial Court, are, well merited, and, do not merit interference.

13. In view of above discussion, we find no merit in these appeals, which are accordingly dismissed, and, the judgment of the learned trial Court is affirmed. Record of the learned trial Court be sent back forthwith.