

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Date of Decision: 06.06.2024

Case: **CRAA No.43/2015**

State of Jammu and Kashmir through SHO
Police Station, Rajouri

..... Appellant(s)

Through :- Mr. Romesh Arora, Sr. AAG.

Vs

Deep Singh S/o Kashmir Singh R/o Dagani
Mohra Chakki, Tehsil Nowshera, District
Rajouri

.....Respondent(s)

Through :- Mr. Sheikh Altaf Hussain, Advocate.

CORAM:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

06.06.2024

Per: Puneet Gupta-J

01. Police Station Rajouri received a docket sent on 26.01.2011 on behalf of Chowki Officer Chingus to the effect that Arshad Hussain Sub Inspector, Incharge Chowki Police Chingus Camp Mohra Dogani Chakli, along with other police personnel was on routine checking near Govt. High School, Chingus and at about 8.30 A.M. from reliable source an information was received regarding the death of a lady in the house of Deep Singh which has taken place in suspicious circumstance. The dead body of Lakshmi Devi W/o Devinder Singh and who is daughter-in-law of Deep Singh (accused in the case) was lying on the floor in one of the rooms of the house of said Deep Singh. The Chowki Officer on visit found injuries on the body of said Lakshmi Devi and as per

injuries, the death was found to be caused due to violence and it appeared as if she has been killed. The docket resulted into registration of FIR No.33/2011 under Section 302 RPC. The investigation was handed over to Arshad Hussain SI, Incharge P/P Chingus. The usual investigation took place and during investigation one bottle of Novan was also seized. Documents regarding settlement agreement between deceased and her husband were also seized and so were seized the clothes of Deep Singh. The investigation resulted into the production of challan under Section 302 RPC against the respondent herein, who is referred to as accused for discussion purposes. The charge was framed against the accused under Section 302 RPC, who denied the charge and claimed trial.

02. The trial Court after examining the prosecution evidence and the defence evidence after recording the statement of the accused under Section 342 Cr.P.C. held that the prosecution failed to prove its case against the accused beyond shadow of doubt. Resultantly, the accused was acquitted of the charge framed against him.
03. Mr. Romesh Arora, learned Sr. AAG, has argued that there was sufficient material before the Court to hold the accused guilty of the heinous offence as the evidence produced by the prosecution did prove the guilt of the accused beyond shadow of doubt. The statements of the witnesses were pointer towards the guilt of the accused but the trial Court has not appreciated the same in its right perspective.
04. Mr. Sheikh Altaf Hussain, learned counsel for the respondent, has of course submitted that the judgment of the trial Court is well reasoned

and requires no interference from this Court in appeal. There is no direct or indirect evidence which could prove the case against the accused beyond shadow of doubt. The acquittal of the accused by the trial Court is required to be maintained in the present appeal.

05. The relationship, which was stated to be not cordial between husband and wife; and the alleged relationship of the deceased with one Sikander Singh prior to the occurrence, made the accused to eliminate the victim in his own house. As per the case set up by the prosecution, there is no eye witness to the alleged occurrence and the prosecution has relied upon the circumstantial evidence against the accused.
06. PW Haqeeqat Singh, PW Kamlesh Devi and PW Sumit Singh are the father, mother and brother respectively of the victim. The perusal of the statement of **PW Haqeeqat Singh** would reveal of the marriage of the deceased daughter with Devinder Singh in the year 2006 and the differences having arisen between the couple time and again and also about a month before the alleged occurrence took place. He states of the compromise having taken place between the parties whereupon the deceased went to the house of the in-laws and thereafter being murdered in that house. He is informed of the death of his daughter on 26.01.2011 and had seen the deceased daughter in Rajouri Hospital where he found the broken shoulder and wrist of the victim and some violence over her neck. The compromise is marked as EXTP-10/1. The witness does not know whether his daughter was having love affair with Sikander Singh and she intended to stay with him. **PW Sumit Singh** has also spoken less or more on the same lines as his father deposed. **PW Kamlesh**

Devi, mother of the deceased, has also deposed that the accused had beaten the victim in his house and thereafter document of divorce was prepared. The complaint was filed with Women Cell Jammu and thereafter the deceased was taken to the in-laws house by the husband of the deceased and after a month her daughter was killed. This witness has also deposed of the injuries seen by her on the body of the deceased. She also does not know about Sikander Singh or alleged affair between Sikander Singh and the deceased.

07. The perusal of the statements of these witnesses at the most mention of some dispute having arisen between the deceased and her husband, and also the compromise which was effected about a month prior to the alleged occurrence and the victim having gone to the house of the in-laws a month prior to the occurrence. Nothing more is elicited from the statements of these witnesses. The statements of these witnesses by any stretch of imagination do not make out that the accused Deep Singh, father in-law of the deceased, could be held guilty of the offence for which he has been charged.
08. **PW Ajeet Singh** and **PW Ashok Singh** are the other witnesses, who are stated to have reached the house of the accused in the morning hours of 26.01.2011. PW Ajeet Singh is the Numberdar and PW Ashok Singh is the Chowkidar of the area. As per Ajeet Singh, he was informed of the death of Lakshmi Devi at 6 a.m. and he along with Ashok Singh-Chowkidar reached the house of Deep Singh and found the body of the deceased lying on the floor in one of the rooms of the house. He also felt the smell of Novan from the mouth of the deceased when he took off

the quilt from the mouth of the deceased. The face of the deceased had become black. He had also taken the bottle of Novan from the spot and handed over the same to the police. The memo of seized bottle is exhibited EXPW-AS. He is also witness to the other seizure memos effected during investigation. The witness was declared hostile but the prosecution could not get any further information from the said witness. The witness has deposed in cross examination that the dead body was lifted from the room and kept on a cot. The clothes of Deep Singh did not smell of Novan. He did not notice the injuries on the body of the victim. **PW Ashok Singh** also claims to have reached the house of the accused alongwith Numberdar and found the dead body on the floor of the house and also Novan bottle near the body of the victim. This witness was also declared hostile and in cross examination by the prosecution he has denied the contents of the seizure memos allegedly related to him though admitting his signatures on the same. He also states of the face of the deceased having turned black. The witness was further examined on the application of the accused and has stated of the victim having illicit relation with Sikander Singh and the deceased having eloped with the said person in the month of September, 2010 and after coming from Amritsar residing in the house of the accused for about three months but again leaving the house of the accused. The witness has deposed of the other members of the family of accused residing in the house where the occurrence took place. The witness has also deposed that the accused was not residing in his house for the last one year prior to occurrence but in his shop. As per the witness, the

deceased was killed by Sikander Singh with whom the victim was in love. As far as the statements of these two witnesses are concerned, their statements do not infer that the accused could be a killer of the deceased in the present case. These two witnesses have come to know about the occurrence in the early morning hours and visited the house of the accused where the victim was lying on the floor of the house and then shifted on a cot. The prosecution has again failed to obtain any information from these witnesses that any act of the accused brings out the culpability of the accused in the alleged murder of the victim, daughter-in-law. The trial Court has rightly held that the statements of these two witnesses do not support the prosecution case in any manner.

09. **PW Mohd. Mushtaq Head Constable** is primarily witness to the seizure memos that were effected during the course of investigation and he is signatory to the same. **PW Kuldeep Kumar SGC** is the photographer. **PW Mohd. Qayoom SGC** is again primarily witness to the seizure of Novan & Supurdnama exhibited AJS and EXPW AJ-S/5 respectively and had also seen the dead body having bluish colour on the right shoulder and neck and the wrist of the left arm having been broken. **PW Arshad Hussain Sub-Inspector** is witness to the seizure memos and had also visited the house of the deceased and seen the dead body of the Lakshmi Devi lying in the middle of the room of the ground floor of the house. The aforesaid witnesses are more or less signatories to the seizure memos. Their statements do not by themselves bring home the guilt of the accused.

10. **PW Raghbir Singh** only speaks of having seen the dead body of the victim in the morning hours. This witness was further examined on the application moved by the accused and has further deposed of the strained relationship between the parties and the alleged affair of the deceased with Sikander Singh. Like PW Ashok Singh, he also records the presence of the family members of the accused in the house when the alleged occurrence took place. On being examined by the prosecution again, the witness deposed of the compromise having taken place between the parties. He is not aware of any love affair of the victim with Sikander Singh. Again, no fruitful link is remotely established through the statement of aforesaid witness against the accused with the death of the victim.
11. The prosecution cannot seek conviction of the accused until and unless the circumstances brought on record make a unbroken chain so as to rule out but the guilt of the accused in the case is trite proposition of law.
12. The statements of other witnesses including **PW Sushil Singh, PW Bodh Raj, PW Shah Hussain, PW Shakti Singh, PW Shabir Ahmed, PW Abdul Qayoom-Naib Tehsildar Rajouri**, who has only resealed four packets brought by the police before him; **PW Mohd. Rafiq-Patwari**, who has prepared some documents, has stated that he was informed by some people that the dead body was lying outside near the house but the police informed that the dead body was lying in the room of which he had made a sketch, are formal in nature. **PW Devinder Singh HC** is the scribe of missing report of Lakshmi Devi, which was lodged by her father on 24.09.2010 and that the said Lakshmi Devi

along with her father had appeared before the Police Station on 30.09.2010 and as such, the missing report was closed; **PW Ghulam Rasool Constable** is witness to the seizure memo of documents produced by the husband of the deceased regarding application filed under Section 13 of Hindu Marriage Act and the decision on the same; **PW Varinder Gupta** is SHO Police Station Rajouri and has deposed of the revenue record being prepared through Patwari and preparation of the challan. Again the statements of these witnesses do not co-relate the death of the victim with the accused. **PW Farzool Singh** has deposed of having seen the body of the victim on visiting the house of the accused on 26.01.2011 and found the wrist and the neck being broken. He was informed by the father of the victim that her in-laws were causing harassment to the victim and that the victim had gone to the house of her in-laws 1/ 2 months prior to the incident. He also states that the deceased never disclosed that she is being harassed by the accused or his family members. He further states that Panchayat was held in Akhnoor where the accused informed the Panchayat that he will not allow the deceased to stay in his house as the victim was with a stranger for a week.

13. The statements made by some of the witnesses to the effect that they were informed of the harassment having been caused to the victim in the house of her in-laws is again the circumstance which does not directly relate to the accused. Even if the Court is to take into consideration that the harassment part is directed towards the accused as stated by **PW Farzool Singh** that too will not go beyond the factum of the accused

being not ready to allow the victim to stay in his house. In fact, none of the witnesses including aforesaid witness speak of the accused having caused any harassment to the victim in their presence.

14. **PW Zakir Hussain** has conducted post mortem of the victim and Dr. Shamim Akhter, Assistant Surgeon, was his associate in conducting the post mortem. As per the post mortem report, the deceased had died due to strangulation with fracture of thyroid cartilage. The post mortem report is exhibited as EXPT-22/1 and Fard Surathal which also bears the signatures of the witness and is exhibited as EXTP-1/2. He had also given replies on certain queries raised by the police and the same is exhibited as EXTP-22/2. The witness has deposed that in the EXTP-1/2 the injury mentioned in the same was recorded after the post mortem of the deceased was conducted. There was a possibility of struggle between the accused and the deceased. The witness is sure that the death was caused by throttling but as on the opening of the stomach the smell of some poisonous substance was found the opinion of the FSL expert was sought. He has not mentioned in the post mortem report of the smell of poison being noticed from the stomach of the deceased. As per his opinion, the poison was given to the deceased immediately after her death. The injuries found on the person of the deceased can be caused by one or more persons.
15. The learned trial Court has held that it is evident from the medical evidence brought on record that the death of the deceased Lakshmi Devi is not suicidal or accidental but homicide. This Court agrees with the finding of the trial court that the death of victim deceased is homicidal

and not otherwise. The medical evidence by itself cannot rope in the accused as killer of alleged victim. The circumstances have to be established by the prosecution that it was accused who had committed the murder and the same could be proved through direct or circumstantial evidence or both. The Court has noted in the preceding paras of discussion regarding the witnesses mentioned above that they do not advance the case of the prosecution linking the accused with the commission of offence.

16. **PW Pawan Kumar Abrol** is an Assistant Scientific Officer FSL Jammu and has prepared the report, which is exhibited as EXTP-23/1. As per the witness, poison was detected through chemical test of viscera. The viscera can be examined for detection of poison after long delay provided the same is properly preserved. He has not mentioned in the report that the containers having viscera had preservatives. The forensic report refers to the presence of poison in the viscera of the deceased. Again referring to the statement of PW Zakir Hussain, the poison is administered to the deceased immediately after her death. The poison is, thus, not the cause of death of the victim, but strangulation. Even if the poison is taken to be the reason which is found in the viscera of the victim as cause of death of the victim, the prosecution has to prove that the poison had been obtained by the accused and it was only he who had administered the same to the victim or in all probabilities he could be the person who had an occasion to administer the poison to the victim. The Court does not find even any distant evidence which proves that the

accused possessed the poison on the day of occurrence or that he could be the only person who had an occasion to give the same to the victim.

17. Taking note of the statement of PW Deepak Jasrotia, the Investigating officer in the case, the court finds that in his examination-in-chief he has referred to the registration of FIR No.33/2011, which is in his handwriting and exhibited as EXTP-26/1 on the docket of Chowki officer which is exhibited as EXTP-1/1. He has deposed of the investigation done by him which includes preparation of site plan, obtaining the documents pertaining to so called settlement/ compromise between the victim and her husband, seizure of articles etc. The FIR though registered on 26.01.2011 at 12.15 p.m. but was sent to the court on the next day at 1 O' clock as per the witness. The distance between the police Station Rajouri and the Court is hardly 1-2 kilometers as per the witness. The witness could not explain as to why it took almost 24 hours to send the FIR to the Court. The sending of FIR after 24 hours of its lodging to the court is definitely a delayed action of the investigating officer as he could not otherwise explain as to why there was a delay in sending the FIR to the Court. In case there is an unexplained delay in sending the FIR to the Court, there is every possibility that some embellishment takes place in the contents of the FIR. The Investigating Officer has deposed that as per investigation there was no eye witness to the occurrence. He has also deposed the fact that it came forth during investigation that the deceased desired to live with Sikander Singh and also marry him. However, no investigation could be conducted from Sikander Singh as he could not be found despite efforts. The statement

of the IO does not lead the court to anywhere. The only inference that can be drawn from the statement of the IO is that there was no eye witness to the occurrence and that the deceased was having interest to live with Sikander Singh.

18. It may be mentioned herein that it had come in the statement of PW Ashok Singh about the relationship of the deceased with the accused. It has further come in the evidence that the deceased had eloped with said Sikander Singh. The deceased had affair with Sikander Singh or not may not be of much value as the Court is mainly concerned with the aspect as to whether the accused is guilty of the offence or not in which he has faced charge.
19. Last but not the least, it is appropriate to take note of the so called disclosure statement of the accused and exhibited as EXTP-26/3. The disclosure statement is of 29.01.2011 wherein the accused is stated to have disclosed before the police that the bottle of Novan and one Shawl are hidden by him in the room of his daughter in-law of which he has the knowledge and which have been recovered and he identifies the recovered articles. The trial court has dealt with the so called disclosure statement made by the accused and has held that the same is not admissible in evidence as the recovery was already effected on 26.01.2011 whereas the disclosure statement is of 29.01.2011. So far as other part of the disclosure statement that he murdered her daughter in-law is not admissible in evidence in terms of Section 25 of Evidence Act. What is admissible is the fact discovered in pursuance to the disclosure statement made by the accused. In fact, this cannot be

considered even as disclosure statement as no recovery is effected on the so called disclosure made by the accused.

20. Mr. Romesh Arora, learned Sr. AAG during the course of argument, had submitted that the statements of two witnesses further recorded on the applications made by the accused, show that the witnesses were made to depose in favour of the accused. The Court is of the considered view that the statements of those two witnesses even when read without taking into consideration the deposition that they made after the applications filed for their further examination the same do not in any way come to the aid of the prosecution as they did not speak in favour of the prosecution. Their statements are only to the effect that the deceased had relations with Sikander Singh.
21. It has come in the evidence of the prosecution that the wife of the accused, daughter in-law and other family members of the accused were present in the house of the accused on the night of occurrence. This fact only substantiates that someone other than the accused Deep Singh could also be the crime doer. Even if this part of the evidence is to be ignored for the sake of argument, even then the prosecution was required to prove that it was the accused who had committed the murder of his daughter in-law. However, the Court finds no cohesive chain of events which may persuade the Court to come to the conclusion that it was the accused who had committed the murder of his daughter in-law.
22. The accused has produced one witness namely Devinder Singh, husband of the deceased, in defence, who has only stated that on the day of occurrence he was on duty and about the affair of his deceased wife with

Sikander Singh and the matrimonial disputes between him and the deceased wife. The statement of this witness is not of much significance in the facts and circumstance of the case.

23. In 'Ballu @ Balram @ Balmukund and another Vs. The State of Madhya Pradesh' (Criminal Appeal No.1167 of 2018) decided on 02.04.2024), the Hon'ble Supreme Court reiterated that the Appellate Court will not interfere in the acquittal unless the view taken by the trial Court is perverse or impossible view.
24. The prosecution is bound to prove its case beyond shadow of doubt and there is no escape for the prosecution to wriggle out of this proposition of law. The Court has no hesitation to hold that the prosecution has miserably failed to prove its case against the accused beyond the shadow of doubt on the basis of circumstantial evidence on which it had relied heavily while setting up the case against him. The Trial Court has appreciated the evidence in its right perspective and this Court finds no reason not to agree with the findings of the trial court that the prosecution has not proved the chain of circumstances and events beyond reasonable doubt. The order of acquittal is upheld.
25. The appeal is without any merit and is **dismissed**.

(PUNEET GUPTA)
JUDGE

(TASHI RABSTAN)
JUDGE

JAMMU

06.06.2024

Narinder

The judgment is pronounced by me in terms of Rule 138(4) of The Jammu & Kashmir High Court Rules, 1999.

Jammu

06.06.2024

(Puneet Gupta)
Judge