

**IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

Criminal Appeal No.D-188-DB of 2003

Date of Decision : May 15, 2015

Rajesh

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Ashwani Bhardwaj, Advocate
for the appellant.

Mr. Vijesh Sharma, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The appellant was tried for committing offence punishable under Section 302 IPC on the allegations that on 23.6.2000 at about 11.00 p.m., while in the area of village Asawarpur, he intentionally committed murder of Adesh Kumari wife of Suresh. Vide judgment and order dated 2/3.12.2002, learned Additional Sessions Judge, Fast Track Court, Sonapat, convicted the appellant for the aforementioned offence and sentenced him to undergo imprisonment for life and to pay an amount of Rs.5,000/- as fine. Aggrieved of the same, the appellant filed the present appeal.

The case of the prosecution, in nutshell, is that on 24.6.2000 at 7.05 a.m. SI Sahab Singh, Station House Officer, Police

Station Rai, after receiving VT message from the Control Room that Adesh Kumari, who was injured had expired, reached Kohli Hospital, Sonapat where he met Ajit Singh s/o Tara Chand, resident of village Asawarpur at the main gate and recorded his statement that he was employed in Everest factory. On the previous day, he returned home after attending his duty. At about 11.00 p.m., he went to the fields to ease himself. While he was returning home and reached near the house of Suresh, he found the iron gate of the said house open and heard cries from inside. He rushed into the house and saw the appellant, who was holding a knife in his right hand, giving blows with the same to Adesh Kumari. The appellant also caused a blow on the right side of chest of Adesh Kumari. Ajit Singh rushed forward to catch hold of the appellant, who, however, fled away with the knife towards fields by scaling over the compound wall of the house. In the meantime, Raj Kumar and Rajpal also reached the spot and witnessed the incident. Jagdish Chander also came at the spot. Thereafter, Ajit Singh, alongwith Jagdish Chander, took Adesh Kumari in injured condition in the car owned by Azad Singh to Civil Hospital, Sonapat. The injured was medico-legally examined by the doctor. She was, thereafter, taken to Kohli Hospital for treatment where she succumbed to her injuries. Ajit Singh further stated that the appellant had entered the house of Suresh with the intention of committing theft and to kill Adesh Kumari.

As the statement of Ajit Singh disclosed commission of offence under Section 302 IPC, SI Sahab Singh forwarded the said statement to Police Station, Rai where FIR No.186 dated 24.6.2000 under Section 302 IPC was registered at 7.45 a.m. by MHC Ramesh Chander.

During the investigation of the case, SI Sahab Singh conducted inquest on the dead body and, thereafter, sent the dead body for post-mortem to Civil Hospital, Sonapat. He himself went to village Asawarpur and prepared rough site plan of the place of occurrence. He took into possession one blood-stained Gudri (quilt). HC Ram Tirath handed over to him one sealed parcel containing clothes of the deceased. SI Sahab Singh then recorded statements of the witnesses under Section 161 Cr.P.C.

Further case of the prosecution is that on 26.6.2000, Inspector Ram Dhan arrested the appellant. During interrogation, the appellant suffered disclosure statement that he had kept concealed a knife in the heap of empty gunny bags in his house about which no one else, excepting him, had any knowledge. Pursuant to the same, the appellant got recovered the knife which was stained with blood. Site plan of the place, from where the knife was recovered, was prepared. On completion of the investigation, report under Section 173 Cr.P.C. was prepared by SI Ram Phal and forwarded to the Ilaqa Magistrate. The case was committed to the Court of Sessions where the appellant

was charged for committing the offence under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW8 Dr. V.K. Gupta, Civil Hospital, Sonapat, who testified that on 24.6.2000 at 12.35 a.m., he medico-legally examined Adesh Kumari and found the following injuries on her person :-

- "1. 1.5 c.m. x 0.5 cm. stab wound right lower chest anteriorly, 3 c.m. lateral to mid line, the margin and ends were clean cut, clotted blood was present, wound was just above the epigastrium, depth of the wound was not ascertained. Advised X-ray chest, AP and lateral view and surgeon opinion.
2. 1.5 c.m. x .5 c.m. stab wound over the right side of anterior of abdomen just below the costal margin, the margin and the ends of the wound were clean cut, depth not ascertained, advised X-ray abdomen and surgeon opinion.
3. 1 c.m. x .2 c.m. incised wound over the right sole of the foot, margin and ends were clean cut. Clotted blood was present.
4. There was diffuse swelling over the right upper lip. Advised dental surgeon opinion."

According to the doctor, injuries No.1 to 3 were caused by sharp edged weapon, while injury No.4 by a blunt weapon. The

probable duration of the injuries was within six hours. After seeing knife Ex.P1, he stated that injuries No.1 to 3 on the person of Adesh Kumari were possible with the same.

PW9 Dr. Arun Garg, Medical Officer, Civil Hospital, Sonapat testified that on 24.6.2000 at 10.45 a.m., he conducted post-mortem on the dead body of Adesh Kumari, aged 26 years, and found incised as well as stab wounds and swelling on the costal margin, abdomen, foot and leg, respectively. According to him, the cause of death was due to extensive haemorrhage and shock as a result of injuries to the liver. The injuries were ante-mortem and sufficient to cause death in ordinary course of nature.

PW16 Dr. P.K. Kohli of Kohli Nursing Home, Sonapat testified that on 24.6.2000 at 2.10 a.m., patient Adesh Kumari was brought to his hospital in a critical condition. She was, however, referred to PGIMS, Rohtak. However, she expired at 3.35 a.m. in his nursing home.

As regards the ocular account of the occurrence, the prosecution examined PW4 Rajpal, PW5 Ajit Singh and PW14 Raj Kumar. Out of them, PW4 Rajpal and PW14 Raj Kumar did not support the prosecution case and were got declared hostile. Even they were cross-examined by the learned Public Prosecutor but no evidence could be brought on record that they had seen the infliction of injuries

upon deceased Adesh Kumari on 23.6.2000 at 11.00 p.m. PW5 Ajit Singh fully supported the case by testifying that on 23.6.2000 at about 11.00 p.m., he got up due to stomach ache and went for easing himself. When he returned, he saw the appellant inflicting knife blows on the person of Adesh Kumari. Light of the bulb provided visibility. In his presence the appellant inflicted a blow on the right side of the chest of Adesh Kumari. He further stated that he tried to catch hold of the appellant but he escaped after jumping over the boundary wall. He also stated that the appellant was seen running away by Rajpal, Raj Kumar and Jagdish Chander. He had then taken Adesh Kumari in the car of the village Sarpanch to General Hospital, Sonapat. Said Adesh Kumari was shifted to Kohli Hospital in a serious condition where she succumbed to her injuries. He went on to state that he made statement Ex.PB to the police regarding the commission of murder of Adesh Kumari by the appellant. He also deposed that on 26.6.2000, he was proceeding to Police Station Rai when he met the police party at the bus stand of his village Asawarpur. The police party brought him to the village where the appellant was apprehended by the police. The appellant suffered disclosure statement Ex.PF and pursuant thereto got recovered knife Ex.P1 which had been kept over the Tand (shelf) in a room in his house.

The prosecution also examined PW2 Jagdish Chander, who testified that he had seen the appellant running away alongwith a knife

at about 11.00 p.m. on 23.6.2000 when he himself had reached in front of the house of the deceased where large number of persons had gathered. He noticed Adesh Kumari lying injured with knife blows. He went to the house of Azad Singh, Sarpanch and arranged his Maruti van in which Adesh Kumari was shifted to Civil Hospital, Sonapat.

Suresh, husband of deceased Adesh Kumari was also examined by the prosecution as PW7, who deposed that on 23.6.2000 one Jai Bhagwan met him at his work place at Jatheri and told him about the incident that his wife had been stabbed by the appellant. Accordingly, he reached General Hospital, Sonapat where the doctor referred his wife to PGIMS, Rohtak, but she was taken to Kohli Nursing Home, Sonapat. The doctor had asked him to arrange blood for his wife but before he could do so, she succumbed to her injuries. He also deposed that the appellant was arrested after 2/3 days of the occurrence and had got recovered knife Ex.P1 in pursuance of disclosure statement.

PW10 Inderpal, Draftsman testified that on 24.7.2000, he visited the spot and prepared site plan Ex.PQ on the pointing out of Ajit Singh. PW12 Rakesh, Photographer testified that on 24.6.2000, he went to the house and took photographs Exs.P3 to P5.

The investigation part of the case was brought on the record by PW1 HC Ram Tirath, PW3 SI Sahab Singh, PW6 Inspector

Ram Dhan, PW11 HC Jugal Kishore, PW13 Constable Jamshed Ali, PW15 SI Ram Phal and PW17 HC Ram Chander.

The prosecution also tendered in evidence report Ex.PL of Forensic Science Laboratory as per which Gudri, lady's shirt and knife were found to be stained with blood. Pursuant to serological analysis, blood on Gudri and lady's shirt was found to be of human origin while the material was found disintegrated on the knife.

When examined under Section 313 Cr.P.C., the appellant claimed to be innocent and falsely involved in the case. In defence, he examined DW1 Azad Singh, who testified that on 23.6.2000 he was present at the house of PW5 Ajit Singh as his mother was suffering from fever. Ajit Singh, Jagdish Chander and Jai Bhagwan were present there. Rajpal came to that house at 11.30 p.m. and stated that the murder of Adesh Kumari, wife of Suresh Kumar had taken place in the house of Suresh. On receiving this information, all of them went to the house of Suresh where they found Adesh Kumari lying with injuries on her person. At that time, there was darkness in the house but light was there outside the house. There was no street light near the house of Suresh. All of them took Adesh Kumari to Civil Hospital, Sonapat in the car.

After hearing learned Public Prosecutor and learned defence counsel and perusing the evidence brought on record, the trial Court believed the testimonies of PW5 Ajit Singh and PW2 Jagdish Chander and on the other hand, disbelieved the testimonies of PW4 Rajpal, PW14 Raj Kumar and DW1 Azad Singh. Relying upon the testimonies of PW5 Ajit Singh and PW2 Jagdish Chander and the medical evidence as well as the factum of recovery of knife used for inflicting injuries, at the instance of the appellant from his house, the trial Court held that it stood established beyond reasonable doubt that the appellant had intentionally caused death of Adesh Kumari by giving knife blows on her chest, abdomen and foot. Accordingly, the appellant was convicted and sentenced, as mentioned above.

We have heard Mr. Ashwani Bhardwaj, learned counsel for the appellant and Mr. Vijesh Sharma, learned Deputy Advocate General, Haryana and with their able assistance, minutely scanned the evidence.

Learned counsel for the appellant has submitted that Raj Kumar and Rajpal, who were projected by the prosecution to be the eye-witnesses of the occurrence, did not support the prosecution case, while appearing before the trial Court. On the other hand, Rajpal, while appearing as PW4, deposed that at about 11/11.30 p.m. on the date of the occurrence he was present at his house and on hearing the noise,

he came out and saw that persons had gathered in the street. He was apprised by Ajit Singh that the appellant had inflicted a knife blow to Adesh Kumari. Similarly, Raj Kumar, whom the prosecution examined as PW14, testified that though Adesh Kumari had been murdered but he did not know by whom the murder was committed. It is also submitted that the evidence of PW5 Ajit Singh, who claimed himself to be an eye-witness of the occurrence, is not trust-worthy as his presence at the time of the occurrence was highly improbable. It is further submitted that there was an unexplained delay in the lodging of the FIR. The prosecution even failed to bring material on the record that the place was well lit and PW5 Ajit Singh was in a position to see infliction of injuries to Adesh Kumari by the appellant.

Learned State counsel has submitted that the prosecution has been able to establish its case against the appellant beyond reasonable doubt.

Having heard learned counsel for the parties, this Court finds that both PW4 Rajpal and PW14 Raj Kumar, whom the prosecution claimed to be the eye-witnesses of the occurrence, for reasons best known to them, failed to support the prosecution case. Both of them were, thereafter, got declared hostile at the request of learned Public Prosecutor, who duly cross-examined them, thereafter. Despite the same, no material could be brought on record to establish

that they had seen the actual occurrence. At the same time, PW5 Ajit Singh, who had seen the occurrence in which the appellant had caused knife blows to Adesh Kumari, since deceased and was residing in the same locality where Adesh Kumari lived and was not shown to be inimical disposed towards the appellant or having soft corner for Adesh Kumari and her family, has clearly stated that while returning home after easing himself in the fields and when passing near the house of Adesh Kumari, he heard cries from inside. He rushed into the house and saw that the appellant who was holding a knife in his right hand giving blows with the same to Adesh Kumari. His testimony is duly corroborated by the medical evidence consisting of the testimonies of PW8 Dr. V.K. Gupta and PW9 Dr. Arun Garg. He even tried to catch hold of the appellant who, however, managed to escape from the spot after jumping over the boundary wall. He also deposed that electric bulb was glowing and its light provided visibility. In his cross-examination, he admitted it to be correct that there was no electric connection in the house of the deceased but he volunteered to state that there was electric pole outside the house and Suresh had affixed a bulb direct on the electricity line on the pole, which was just by the side of his house. In the rough site plan Ex.PD, which PW3 SI Sahab Singh had prepared of the place of occurrence, mark 'B' was shown to be the one where there was an electric pole in the street and bulb fitted on the same emitting light. The suggestion given by the defence that there

was no electric bulb fitted on the electric pole in the street was specifically denied by PW3 SI Sahab Singh. Similarly, PW10 Inderpal, Draftsman testified that after visiting the spot and on the identification of Ajit Singh, he prepared rough site plan Ex.PQ. Mark 'B' therein indicated electric pole by the side of the house of the deceased and the electric bulb fitted on the same was glowing. He denied the suggestion of the defence that there was no electric bulb or pole at point 'B' in Ex.PQ. Under these circumstances, the stand of the defence and also of DW1 Azad Singh that there was darkness in the house of the deceased and no street light was near the house of Suresh, cannot be accepted.

The testimony of PW5 Ajit Singh is duly corroborated by PW2 Jagdish Chander who stated that he had reached in front of the house of the deceased at about 11.00 p.m. on 23.6.2000 and had seen the appellant running away while carrying knife with him. Said Jagdish Chander also testified that after the incident, the van of Azad Singh was used for shifting Adesh Kumari to Civil Hospital, Sonapat. In the medico-legal report Ex.PM proved by PW8 Dr. V.K. Gupta, the name of Jagdish Chander was mentioned in the column meant for the description of the person who had brought the injured to the hospital. From the cross-examination of PW2 Jagdish Chander, it is made out that the defence has not been able to bring any material on the record which could suggest that he was not present at the time of the

occurrence. Under these circumstances, this Court finds that testimony of PW5 Ajit Singh and PW2 Jagdish Chander are worthy of acceptance.

The incident in question had taken place at about 11.00 p.m. on 23.6.2000 at the house of the deceased in village Asawarpur. Immediately, after the occurrence Adesh Kumari was shifted to Civil Hospital, Sonapat where she was medico-legally examined by PW8 Dr. V.K. Gupta on 24.6.2000 at 12.30 a.m. As her condition was critical, she was referred to PGIMS, Rohtak. However, she was shifted to Kohli Nursing Home, Sonapat where she reached on 24.6.2000 at 2.10 a.m. as deposed by PW16 Dr. P.K. Kohli. On 24.6.2000 at 7.05 a.m. SI Sahab Singh, Station House Officer, Police Station Rai after receiving VT message from the Control Room that Adesh Kumari, who was injured had expired, reached Kohli Hospital, Sonapat where he came across PW5 Ajit Singh and recorded his statement. The said statement was, thereafter, sent to Police Station Rai where on its basis FIR No.186 dated 24.6.2000 under Section 302 IPC was registered at 7.45 a.m. The special report was, thereafter, sent through PW11 HC Jugal Kishore and received by Judicial Magistrate 1st Class, Sonapat on 24.6.2000 at 11.00 a.m. From the above material brought on record, it is made out that there was no delay, at all, in the lodging of the First Information Report with the police.

The appellant, after his arrest had suffered disclosure statement Ex.PF to the effect that he had kept concealed the knife in his house on the shelf under the heap of Kinow bag and could get the same recovered. Pursuant to the disclosure statement, the appellant got recovered knife Ex.P1 from the designated place which was taken into possession by PW6 Inspector Ram Dhan vide memo. Ex.PG. The Gudri (quilt), lady's shirt and the knife were, later on, sent to Forensic Science Laboratory, Madhuban and blood stains were found on them. The blood on Gudri and lady's shirt were found to be of human origin, while no opinion could be given regarding the blood on the knife as the material had disintegrated by then.

For the aforementioned reasons, no case is made out for upsetting the impugned judgment of conviction and sentence passed by the trial Court.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

May 15, 2015
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