

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Appeal No.1103-DB of 2009
DATE OF DECISION: January 29,2015

Ramesh

....Appellant

versus

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reports of the local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms.Aditi Girdhar, Advocate, Legal Aid Counsel
for the appellant.
Ms.Tanisha Peshawaria, Deputy Advocate
General for the State of Haryana.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment dated 13.8.2009 passed by the then learned Sessions Judge, Karnal vide which appellant-Ramesh has been held guilty and convicted for the offence punishable under Sections 302 and 309 of the Indian Penal Code (hereinafter called `IPC') and the order of sentence dated

19.8.2000 vide which appellant has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for a period of three years for the offence punishable under section 302 IPC. He was further sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.500/-. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for 15 days for the offence punishable under section 309 IPC.

2. The sequence of events leading to this prosecution can be summed as under:

That on 6.4.2007, on receiving a telephonic message in Police Station Kunjpura, from village Nalipar that accused-appellant Ramesh Kumar, in an injured condition and his wife Kanta dead are lying on a cot in their room. ASI Jodha Ram (PW16) along with police officials reached there and met PW7-Rajinder Kumar (complainant), brother of deceased Kanta. Many other persons were also present there. PW7-Rajinder Kumar got his statement Ex.PH recorded, wherein he alleged that about 16 years back, his sister Usha was married with Ram Kumar and his other sister Kanta (since deceased) was married with accused Ramesh. Accused-appellant Ramesh and Ram Kumar are the real brothers. Kanta had no issue. Ramesh and his father

Phool Singh were convicted for killing a son of Hakam Rai Sikh, of the village, for which they were undergoing life imprisonment in Kurukshetra Jail. As and when appellant Ramesh used to come on parole/furlough, he used to bring his wife Kanta from her parental home. Now Ramesh and his father Phool Singh had come on parole for 15 days. Relations between Kanta and accused Ramesh were strained, so about two months back, she had filed a divorce petition against him. Now when the accused came on furlough, he took his sister giving the threat that if she will not accompany him, then he will commit the murder of her brother. Due to fear, they sent Kanta with accused Ramesh in village Nalipar about 10 days ago. Ramesh and Phool Singh were to surrender to Kurukshetra Jail on 5.4.2007. Phool Singh had gone to the Jail, but accused Ramesh did not go to the Jail. Today (6.4.2007) at about 1.00 p.m., his brother-in-law Ram Kumar and sister Usha, telephonically informed that both were not present at their house. They had come to know that Kanta was lying dead in their room and Ramesh was lying in an injured condition on the cot. On this information, complainant Rajinder Kumar along with his grand-father Ram Chander @ Fauji came to village Nalipar and saw that Kanta was lying dead on the cot and Ramesh had been taken to the hospital in an injured condition. A pool of blood was lying near the cot. He was satisfied that

Ramesh has murdered his sister by strangulating by putting a 'Chunni' around her neck intentionally. Earlier many times, he had given threats to his sister to kill her and today he has executed it by killing her. From the statement of PW7-Rajinder Kumar, Ex.PH, formal FIR Ex.PH/1 was registered and investigation was started.

3. FSL team was summoned at the spot and the scene of crime was preserved. Shri Chander Shekhar SSA of FSL and Raj Kumar, Photographer had reached the scene of occurrence after sometime and inspected the scene of crime. The photographer also clicked the snaps of the scene of crime. ASI Jodha Singh prepared the inquest report, Ex.PB, on the dead body of Kanta. Thereafter, investigation was taken over by PW17-S.I. Subhash Chander, the then SHO, Police Station Kunjpura. The Investigating Officer lifted the blood stained swab in cotton, blood from the floor in a match box, vomiting material, one 'Chunni' from the cot of deceased, curd lying on an iron box in a vial, one shirt from the cot of deceased, some tablets and one white colour substance lying on iron box, a piece taken from the mattress lying on the cot of deceased duly blood stained, some omelette lying on iron box, one 'biri', one bundle, one match box, lying near the cot of deceased, one empty box of mortien coil, two shaving blades one from the floor and another from the iron box, one pair of ladies 'chappal', one

pencil and one ball pen from the cot of the deceased, one iron 'khurpi' and one cotton swab after wetting from the water from the water in the bucket, lying near the cot of deceased, which were sealed in separate parcels and were taken into possession vide recovery memo Ex.PM. The dead body was sent to the General Hospital, Karnal for post mortem examination. Appellant Ramesh was admitted in PHC, Kunjpura from there he was referred to General Hospital, Karnal. After the post mortem examination, the belongings of the deceased contained in one sealed parcel along with the viscera of the deceased were taken into possession by the Investigating Officer.

4. Appellant Ramesh was arrested in this case and interrogated. During interrogation, he made disclosure statement, Ex.PY. and in pursuance of disclosure statement, he pointed out the place of occurrence. The case property was deposited with the MHC. The articles were sent to FSL, Madhuban for examination. On completion of investigation, the report under Section 173 of CrPC was presented in the Court.

5. The accused was charge sheeted for offences punishable under sections 302,309 and 506 IPC by the then learned Sessions Judge, Karnal vide order dated 12,10.2007 to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution

examined as many as 17 witnesses. The report of FSL was also brought on record.

7. When examined under Section 313 CrPC, the accused pleaded that he has been falsely implicated in this case. They both husband and wife had extreme love and affection. His wife Kanta even did not think over to contact second marriage even after 14/15 years of his conviction. As and when, he used to come on parole/furlough, his wife Kanta used to pressurize him to abscond from jail and to go to some other place. He used to console her that the period of conviction was almost going to be set off and thereafter they will live together peacefully. On 6.4.2007, at about 7.00 a.m., he had gone to village Kunjpura to purchase essential commodities for his wife and to arrange some money for her maintenance. He arranged Rs.750/- for her. When he came back to villager Nalipar, he found people gathered in front of his house and came to know that his wife had committed suicide and her dead body was already removed to General Hospital, Karnal. He was shocked and thereafter to end his life, he cut the veins of his hands and throat with the blade because he was having no reason to be alive without his wife. His wife has committed suicide by hanging herself because she was fed up due to harassment given by her Bhabi (brother's wife) in village Kachhwa and also due to non-agreeing of her proposal by him for

absconding from the Jail. Earlier also, his wife had attempted to commit suicide at village Kachhwa when he was in Jail.

8. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offences punishable under Sections 302 and 309 IPC, whereas, he was acquitted for the offence punishable under Section 506 IPC. He was awarded the sentence as mentioned in upper part of the judgment.

9. We have heard Ms.Aditi Girdhar, Advocate, learned Legal Aid Counsel for the appellant and Ms.Tanisha Peshawaria, learned Deputy Advocate General for the State of Haryana and have carefully examined the record of the case.

10. Initiating the arguments, learned counsel for the appellant contended that the appellant had been falsely implicated in this case. The material witnesses of the prosecution have not supported the prosecution version. PW8-Komal, the niece of the appellant as well as deceased-Kanta was projected as an eye witness of the occurrence but she has not supported the prosecution version at all. PW9-Usha, the sister of deceased-Kanta, who was married with the real brother of the appellant and residing in that very house, has also not supported the prosecution version.

PW12-Amar Singh, uncle of the appellant, has also turned hostile. Thus, she contended that there is no direct evidence to establish the charges.

11. She further contended that even there is no legally admissible circumstantial evidence against the appellant. In fact, the appellant and his wife Kanta were having deep love and affection with each other. She was compelling the appellant to abscond and to settle somewhere else, but the appellant used to advise her that his sentence was going to be over and thereafter they will live peacefully. The deceased was also harassed and maltreated at her parental house by her Bhabi, so she was under shock and when the day of the appellant to surrender in the Jail arrived, she committed the suicide. She contended that even PW2-Dr.S.P.Singhal, who has conducted the post mortem examination, has categorically admitted in the cross examination that injuries mentioned in the post mortem report, Ex.PE, could occur in case of suicide which supports the defence plea. She contended that there was absolutely no motive for the appellant to commit murder of his wife for whom he was having great love and affection. Thus, she pleaded that the appellant has wrongly been convicted by the trial Court.

12. On the other hand, learned State counsel has contended that though the witness of occurrence, namely,

PW8-Komal has turned hostile being the niece of the appellant, there are sufficient incriminating circumstances on record to establish the charges. She contended that the intention of the appellant was evident as he has over-stayed the furlough period. He was having strained relations with the deceased. The injuries were found on the person of the appellant as he had attempted to commit suicide after killing his wife Kanta. The appellant has not rendered any explanation how Kanta met with the death in the matrimonial home. The presence of the appellant along with the deceased in the house at the time of occurrence is established. He has come forward with a false plea of suicide. Thus, she contended that there is no legal infirmity in the conviction of the appellant recorded by the trial Court.

13. We have duly considered the aforesaid contentions.

14. Admittedly, the case of the prosecution was based on direct evidence. PW8-Komal, the niece of the appellant as well as the deceased was projected as an eye witness of the occurrence but while appearing in the witness box as PW8, she has not supported the prosecution version. She stated that she did not hear anything from the room of Ramesh and Kanta. She did not see any occurrence. However, she stated that her grand-father asked her to bring her parents from the fields because Ramesh and Kanta

were not speaking. Thereafter, she stated that they found that her aunt Kanta and uncle Ramesh were lying on one cot.

15. PW9-Usha, sister of the deceased and PW12-Amar Singh, the uncle of the appellant, have also not supported the prosecution version and were declared hostile but they were not the witnesses of the occurrence and had arrived at the spot later on.

16. It is not necessary that there must be the direct evidence to establish the commission of offence. The charges can certainly be established by the prosecution by producing the circumstantial evidence. In the cases based on the circumstantial evidence to prove the charges, Hon'ble Apex Court in case titled as Sharad Birdhi Chand Sarda v. State of Maharashtra 1984 Supreme Court Cases (Criminal) 487 has laid down the golden principles as under:

- 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
- 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

- 3) the circumstances should be of a conclusive nature and tendency;
- 4) they should exclude every possible hypothesis except the one to be proved; and
- 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

17. In the instant case also, there is a complete chain of circumstantial evidence to establish the guilt of the appellant.

18. From the statement of PW6-Sanjay Banger, Deputy Superintendent, Central Jail, Ambala, it comes out that the appellant was released on furlough for two weeks on 21.3.2007 and he was to surrender in District Jail, Kurukshetra on 5.4.2007. He further categorically stated that convict Ramesh did not surrender in Jail on 5.4.2007, rather surrendered in Kurukshetra Jail on 5.5.2007 under the orders of Judicial Magistrate Ist Class, Karnal. It also comes out from the statement of PW6 that the appellant was sentenced to life imprisonment in a previous murder case bearing FIR No. 92 dated 28.2.1992 under Sections 302,34 IPC, Police Station Sadar, Karnal.

19. From the aforesaid evidence, it comes out that the appellant has over-stayed furlough. It also comes out from

the statement of prosecution witnesses that the father of the appellant, who was also a life convict in the aforesaid murder case was also released on furlough along with the appellant, had surrendered before the Jail Authorities on the stipulated date. Thus, non-surrendering of the appellant on the due date after the expiry of period of furlough indicates his intention to commit the crime.

20. It is also established from the evidence on record that the appellant was having the strained relations with his wife-Kanta. PW10-Rakesh Kumar, Record Keeper, Sessions Court, Karnal has brought the file of case titled Kanta versus Ramesh, HMA case No.22/2007 decided on 2.6.2007. He deposed that Kanta wife of Ramesh, daughter of Jagdish, resident of village Kachhwa, Tehsil and District Karnal has filed the divorce petition, Ex.PQ, against Ramesh (appellant) and at that time, he was lodged in District Jail, Kurukshetra. The petition was filed on 31.1.2007 and was withdrawn on 2.6.2007 on the statement made by Sh. D.R.Goyal, Advocate, counsel for the deceased. The statement Ex.PQ/2 made by Sh.D.R.Goyal, Advocate, counsel for the deceased on 2.6.2007 shows that the divorce petition was got dismissed as withdrawn due to the death of Kanta-deceased and the said petition was ordered to be dismissed as withdrawn by learned District Judge, Karnal vide order dated 2.6.2007, Ex.PQ/1. It shows that on the date of commission

of the offence, the divorce petition filed by the deceased was pending against the present appellant and relations between the deceased and the appellant were strained.

21. PW7-Rajinder Kumar (complainant) has stated that when the appellant had come to take Kanta for the first time on 22.3.2007, his parents asked him to go to his house and they will take a decision later on after consultation. However, the accused did not agree to their proposal and they called the police and sent the appellant with the police. He further deposed that appellant took Kanta with him on 26th or 27th March, 2007.

22. PW13-Jagdish, father of the deceased, has categorically stated that the accused had taken away Kanta to his house after pressurizing her. Kanta was not willing to accompany the appellant. Kanta had earlier filed a divorce petition against the accused. While leaving accused had threatened Kanta that he would kill her father and brother, if they did not send her with him or marry her elsewhere.

23. The plea that as a result of compromise, the divorce petition was withdrawn stands falsified from the documentary evidence. Ex.PQ/2 is the statement dated 2.6.2007 of Sh.D.R.Goyal, Advocate counsel for the deceased for withdrawal of the petition and the said petition was dismissed as withdrawn by the learned District Judge, Karnal vide order dated 2.6.2007. So, the said petition was

disposed of after the present occurrence. In fact, on the date of occurrence, the matrimonial litigation was pending between the appellant and the deceased.

24. It is also established from the statements of PW13 Jagdish, the father of the deceased and PW7-Rajinder Kumar (complainant), brother of the deceased, that the appellant had been threatening the deceased. He has taken the deceased to his house only on 26th or 27th March 2007 and this occurrence had taken place on 6.4.2007 i.e. only after few days of taking the deceased to the matrimonial home.

25. It is established from the evidence available on record that the occurrence has taken place in the house of the accused and the accused was also very much present in the house at the time of occurrence. No doubt, PW8-Komal, the niece of the accused, has not supported the prosecution version on the point of occurrence but it is settled principle of law that the statement of hostile witness is not totally effaced of the record. That portion of the statement of such a witness which corroborates the prosecution version still can be taken into consideration. PW8-Komal has categorically deposed that Ramesh, her uncle and Kanta, aunt were present in their room. She also deposed that they found in the house that both her aunt-Kanta and uncle-Ramesh were lying on the cot. PW9-Usha, sister of the deceased and sister in law (brother's wife) of the appellant,

has also categorically deposed that on 6.4.2007 she and her husband had gone to the fields to harvest the crop. The accused and Kanta, deceased were present at their house. In the cross examination by the learned Public Prosecutor, she further stated that it is correct that when she came to their house, she saw that Kanta was lying dead on the cot and Ramesh was lying in an injured condition on the cot. She further deposed that police had reached at the scene of occurrence earlier to her arrival at the house. Ramesh had been sent to the hospital some time earlier to the arrival of her parents. PW12-Amar Singh, the uncle of the accused, also deposed that when he reached there, he found that dead body was lying on the cot. Ramesh was also lying unconscious on the same cot. His hands and throat were also bleeding at that time.

26. From the aforesaid statements of the witnesses, it is established that at the time of occurrence, the appellant was in the company of the deceased. The dead body of Kanta was recovered lying on the cot and the appellant was also lying on the same cot in an injured condition. So it is for the accused to render explanation under what circumstances, deceased Kanta suffered death as these circumstances were specially in the knowledge of the appellant.

27. In his statement under Section 313 CrPC, the

appellant has pleaded that Kanta has committed suicide by hanging herself because she was fed up due to harassment given by her Bhabhi in village Kachhwa and due to his non-agreeing to her proposal for absconding from the Jail. He has also taken the plea that on 6.4.2007 at about 7.00 a.m., he had gone to village Kunjpura to purchase the essential commodities for his wife and to arrange the money. He further deposed that when he returned to village Nalipar, he found that people had gathered in front of his house and came to know that his wife had committed suicide and her dead body was also removed to the General Hospital, Karnal. The aforesaid version of the appellant is proved to be false explanation. There is no circumstance to show that the deceased has committed suicide by hanging, rather her dead body was found lying on the cot. If it would have been the case of suicide by hanging the body of deceased, might have found hanging but that was not so. PW12-Amar Singh has categorically stated that dead body of Kanta was lying on the cot. The present appellant was also lying on the same very cot and was unconscious. His hands and throat were bleeding at that time. Even the medical evidence shows that the cause of death of the deceased was due to strangulation.

28. The plea of the appellant that he had gone to Kunjpura to arrange for the essential commodities and money for the deceased also stands falsified from the

statements of PW8-Komal, PW9-Usha and PW12-Amar Singh, as all the witnesses have stated that the deceased and the accused were found lying on the cot in the room where the occurrence had taken place. Their statements show that the accused was very much present in the room and had not gone to village Kachhwa as alleged by him. Thus, the appellant was the person who was in the company of the deceased for the last time and was required to explain how deceased Kanta met with death by strangulation. So, instead of coming out with the honest explanation about the circumstances leading to the death of Kanta, the appellant has come forward with the false plea. Thus, non-explanation of the real circumstances leading to death of deceased Kanta which were in the special knowledge of the appellant raises the presumption under Section 106 of the Indian Evidence Act and is the clinching circumstance to establish his guilt. To support this view, reference can be made to the cases of Shrichand v. State of Chhattisgarh, 2011 CrL.L.J. (NOC) 78; Harshal Suresh Rawate v. State of Maharashtra, 2011 CrL.L.J. (NOC) 276; Satish Knodiba Gawali v. State of Maharashtra, 2011 Cri.L.J., 3532; Diwani Ram and another versus State of Uttarakhand, (2011) 3 Supreme Court Cases (Cri) 754; Deepak Bhatt versus State of Uttarakhand 2014 Cri.L.J., (NOC) 140 (UTR); and Nitin Parmar versus State of Uttarakhand 2014 CrL.L.J., 984.

29. It is also well settled principle of law that the false plea raised by the appellant also supplies the link in the chain of the circumstantial evidence. In the instant case also, the appellant has taken the false plea that deceased Kanta has committed suicide by hanging and he had gone to Kachhwa at the time of occurrence. As already discussed above, it is established that the appellant was very much present in that very room with deceased Kanta where the occurrence had taken place. He was lying in an injured condition on the same cot with the dead body of Kanta. The attending circumstances also shows that it was a not a case of hanging, rather it was a case of strangulation. So, the false plea raised by the appellant is again a strong circumstance against the appellant. To support this view, reference can be made to the cases of Rameshbhai Mohanbai Koli and others v. State of Gujarat 2011 AIR (SCW) 378, State of Maharashtra v. Suresh 2000(1) Crimes 1 and State of Andhra Pradesh v. Kanda Gopaludu 2005(4) RCR (Criminal) 686.

30. As per statement of PW1-Dr.Rajinder Kumar, who has medico legally examined the accused, the hands of the accused were stained with blood. He was also having the incised wound on the right side of his neck, on the anterior side of left wrist joint and on the anterior side of the right wrist joint, which shows that after the commission of crime,

the appellant has attempted to commit suicide.

31. The 'Chunni' which was used as a ligature has been recovered from the spot. The said 'Chunni' was sent to FSL for examination. The report of FSL is Ex.PG which shows that the said 'Chunni' was stained with blood stains. The presence of the blood on the said 'Chunni' corroborates the version of the prosecution that the same was used as a ligature in the commission of crime.

32. The appellant also had the motive to kill deceased Kanta, as she had filed the divorce petition against the appellant on 31.1.2007 and the same was pending on the date of this occurrence.

33. The aforesaid incriminating circumstances form a complete chain of the events as would permit no conclusion other than one of the guilt of the accused. These circumstances are consistent with his guilt and inconsistent with his innocence and clearly shows that in all probability, the offence has been committed by the appellant and by none else. The plea raised by the accused has been found false.

34. Thus, keeping in view the aforesaid discussion, the prosecution has been able to establish, beyond shadow of reasonable doubt, that the appellant has committed the murder of his wife Kanta and thereafter attempted to commit suicide. Thus, we do not find any legal infirmity or

impropriety in the conviction of the appellant recorded by the learned trial Court and the sentence awarded to him.

The same are hereby maintained and affirmed.

Resultantly, the present appeal, having no merits, is hereby dismissed.

(M.JEYAPPAUL)
JUDGE

January 29,2015
KD

(DARSHAN SINGH)
JUDGE