

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

**CRA-D-22-DB of 2011
DATE OF DECISION : January 30, 2015.**

Rajesh **...Appellant**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Vikram Singh, Advocate
with Mr. Rahul Vats, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Accused Rajesh aggrieved by the conviction and sentence passed by the trial Court under Section 302 read with Section 34 of the Indian Penal Code, has come forward with the present appeal.

2. It is the case of the prosecution that accused Rajesh and his sister Jyoti, used to taunt deceased Shilpa daughter of PW11 Sheela Devi and PW12 Satish. Shilpa belonged to a different community but happened to marry Krishan, the brother of accused Rajesh and Jyoti who belonged to a different community. The marriage of Shilpa with Krishan took place about eight months prior to the occurrence. Shilpa informed PW11 Sheela Devi who was her mother that accused had designed to murder her on account of the grudge they harboured. PW2 Naresh Kumar, the uncle of the deceased Shilpa, spoke about the information he received that accused Rajesh and his sister Jyoti murdered Shilpa.

3. During investigation, when it was revealed that accused Jyoti was a juvenile, she was sent to Juvenile Justice Board, Jhajjar to face enquiry and the appellant alone was sent to face trial before the trial Court.

4. PW1 Dr. Nihal Singh conducted post mortem examination on the dead body of Shilpa on 17.11.2009. He found a contusion measuring 5 c.m. x 3 c.m. on the right parietal region of skull bone. Sub-dural haematoma was present underneath the fractured region. In his opinion, the deceased died on account of traumatic intracerebral haemorrhage due to the head injury found on the person of the deceased.

5. PW13 Inspector Dalel Singh in the presence of PW9 H.C. Satbir Singh arrested the accused. On the basis of disclosure

statement suffered by him, a wooden log of the cot was recovered from his house.

6. In the statement under Section 313 Cr.P.C. the accused Rajesh came out with a plea that he was falsely implicated though he was innocent.

7. The trial Court having relied upon the evidence of PW2 Naresh Kumar in the background of the disclosure statement suffered by the accused to PW13 Inspector Dalel Singh in the presence of PW9 H.C. Satbir Singh the recovery of wooden log of a cot at the instance of the accused, chose to convict the accused.

8. The learned counsel appearing for the appellant would vehemently submit that PW11 Sheela Devi the mother of the deceased completely resiled from the First Information Report lodged by her. PW12 Satish, the father of the deceased, also turned hostile. PW2 Naresh Kumar, the uncle of the deceased has spoken about the information he received from somebody else. The weapon recovered also did not contain any blood stains. Therefore, it is his submission that there is no legal evidence to convict accused Rajesh.

9. We also heard the submission made by learned State counsel supporting the conviction and sentence passed by the trial Court.

10. On a thorough perusal of the entire materials on record, in the back ground of the rival contentions made, we find that the

entire case of the prosecution is based on circumstantial evidence and the information allegedly passed on by deceased Shilpa to her mother Sheela Devi who was examined as PW11.

11. Of course, the evidence of PW1 Dr. Nihal Singh, who conducted post mortem examination on the dead body of Shilpa, would go to establish that there was a lethal injury found on the parietal region of the skull of the deceased which caused her death. In other words, the prosecution has established beyond reasonable doubt that Shilpa had died a homicidal death.

12. The question that arises for determination is whether the accused committed the murder as projected by the prosecution. As rightly pointed out by learned counsel appearing for the appellant, PW11 who set the law in motion by lodging the First Information Report, completely turned hostile to the case of the prosecution. She failed to corroborate the First Information Report lodged by her. Even otherwise, there is no evidence to substantiate the foundation laid by the prosecution through the First Information Report lodged by PW11. PW 12, who was none other than the father of the deceased Shilpa, also failed to support the prosecution. In fact, PW11 and PW12 have gone a further step and declared that deceased Shilpa was honourably treated by accused Rajesh. In other words, PW11 and PW12 have given clean chit to accused Rajesh. Therefore, evidence of PW11 and PW12 does not indicate the role of accused Rajesh in the murder of Shilpa.

13. Let us go further deeper into the original version of PW11 in the First Information Report she lodged on 21.11.2009 and the supplementary version she suffered on 6.12.2009. In the First Information Report which was exhibited as Ex. P8, there was no whisper that accused Rajesh taunted the deceased. Neither the grudge harboured by him nor the design he hatched to kill the deceased had been referred to in the First Information Report but in the supplementary statement Ex. P14 suffered by her on 6.12.2009 she had attributed taunting, the grudge harboured and the design to kill Shilpa hatched by the accused. Such a diametrically varied version of PW11 creates a doubt in the mind as to the complicity of accused Rajesh in the crime of murder. Even otherwise, the First Information Report and the supplementary statement suffered by PW11 shall be completely discarded by the Court of law, inasmuch as the author thereof failed to corroborate the same.

14. PW2 Naresh Kumar has deposed that he got an information on enquiry that accused Rajesh along with his sister Jyoti beat and murdered Shilpa. Unfortunately, such a version of PW2 which is a rank hearsay stuff was the foundation of recording conviction by the trial Court.

15. On a thorough perusal of the evidence of PW2, we find that he was not in a position to divulge even the name of the person from whom he collected such a vital information. The prosecution also was not in a position to examine the star witness who passed

on such information to PW2. As rightly pointed by learned counsel appearing for the appellant, such a testimony of PW2 cannot be relied upon as a legal piece of evidence. Further, we find that PW2 categorically admitted that he never visited the house of the accused prior to the occurrence. Therefore, in our considered view he was not the competent witness to speak about the nature of relationship maintained by accused Rajesh with deceased Shilpa. In our considered view, the evidence of PW2 cannot at all be a basis for recording conviction.

16. A wooden log of a cot was recovered from the house of the accused. No blood stains were found on the weapon recovered and as a result of which, the same was not sent to the Forensic Science Laboratory for analysis. Such a common object allegedly recovered from the house of the accused cannot indicate the involvement of the accused in the crime of murder.

17. We find that the trial Court has failed to properly appreciate the evidence on record in the background of the well settled position of law before recording conviction. We are of the considered view that the prosecution miserably failed to establish the charge of murder attributed to the accused/appellant.

18. For the above reasons, appellant Rajesh is acquitted of the charge framed as against him. The judgment of conviction and sentence passed by the trial Court under Section 302 of the Indian Penal Code is set aside. Consequently, the appeal is allowed.

Accused be set at liberty forthwith, if his custody is not required in connection with any other case.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

January 30, 2015
p.singh