

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-880-MA of 2015

DATE OF DECISION: NOVEMBER 8, 2016

STATE OF HARYANA

...APPLICANT

VERSUS

SHEELA @ SUNITA AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

PRESENT: MR. KAPIL AGGARWAL, ADDL.A.G., HARYANA,
FOR THE APPLICANT.

NONE FOR THE RESPONDENTS.

M. JEYAPPAUL, J.

1. Aggrieved by the acquittal of respondents No.1 to 3 who were charged under Sections 302 and 120-B IPC read with Section 34 IPC, the State of Haryana has filed the present application seeking leave to prefer an appeal.

2. It is the case of the prosecution that accused Sheela @ Sunita who is the wife of complainant PW2 Sanju aggrieved by the illicit relationship of deceased Savita, wife of PW8 Ravi had with complainant Sanju PW2, hatched a criminal conspiracy with other two accused, namely, Vinod @ Pillu and Vinod @ Langda and all the three accused joined together and committed the murder of Savita by slitting her neck.

3. The most material witnesses are PW2 complainant Sanju, husband of accused Sheela @ Sunita and PW8 Ravi, husband of deceased

Savita. PW2 has deposed that he received an information from his wife

Sheela that Savita was found lying dead on the floor near her bed with a cut mark on her neck. He called the police control room and passed on the information. PW8 Ravi has stated that he was married to Savita for 5 years. On 23.1.2013, he had been to Kurukshetra to take care of his mother Giano Devi who was admitted to Pawan Surgical Hospital, Kurukshetra. On 24.1.2013, he received a telephonic message from his brother PW2 Sanju regarding the murder of his wife by someone. On 5.2.2013, he suffered supplementary statement before the police that accused Sheela used to quarrel with deceased Savita and used to give beatings on the pretext that Savita had developed illicit relations with PW2 Sanju. Accused Sheela used to visit his house casually. She had malice in her mind. She also gave criminal intimidation to cause death of Savita. He deposed that he was confident that Sheela had conspired with Vinod @ Pillu and Vinod @ Langda to murder Savita.

4. The medical evidence adduced by the prosecution through PW6 Dr. Tarun and PW7 Dr. Sumit Singhal would show that deceased Savita had been subjected to sexual intercourse before her death as there was detection of human semen on vaginal swab collected. Accused had suffered disclosure statements. Based on the disclosure statement of Vinod @ Pillu an iron rod was recovered and on the basis of the disclosure statement suffered by accused Sheela, Mobile phone Ex.MO/1 and Sim card Ex.MO/1A were recovered.

5. On the side of the defence DW1 Lajwanti and DW2 Kavita were examined to demonstrate that accused Vinod @ Pillu was not arrested

at his residence.

6. The trial Court found that there was no substantial evidence let-in by the prosecution to prove the charges laid against them. The recovery of the iron rod does not connect the accused to the crime. It was also observed by the trial Court that recovery of the mobile phone and the Sim Card does not establish the involvement of the accused to the crime.

7. Learned Addl.A.G., Haryana vehemently argued that the motive to commit the crime was established through evidence of PW8 Ravi, husband of deceased Savita. The disclosure statement and the recovery of the material object, namely, iron rod would corroborate the version of the prosecution that the accused committed the murder. The telephone call details also connect the accused to the crime, it was further submitted. Therefore, it is his submission that leave as sought for to prefer an appeal may be granted.

8. Though Dr. Naresh Kumar, Advocate entered appearance for the respondents. There was no appearance on the day when we took up the application for hearing.

9. We went through the entire case file in the background of the submissions made by learned counsel appearing for the State.

10. We find that there is medical evidence to show *prima facie* that deceased Savita was subjected to rape before she was done to death. But the prosecution ha given up such a charge as the offence of rape could not be connected to the accused during the course of investigation.

11. Let us first take up the motive for the crime attributed to the

accused. Of course, PW8 Ravi, the husband of deceased Savita has deposed that accused Sheela used to quarrel with Savita and give her beatings on the pretext that Savita had developed illicit relations with PW2 Sanju. It is his testimony that she had malice in her mind and gave criminal intimidation to cause death of Savita.

12. The occurrence had taken place in the night of 23.1.2013. It was only Sheela, wife of PW2 who had passed on the information as regards the murder of Savita to her husband PW2 Sanju. In our considered view, if she was involved in the murder, she would not have passed on such an information to her husband so that he could alert PW8 Ravi who had been to Kurukshetra to take care of his mother Giano Devi. A culprit would not have thought of inviting trouble by passing on such an information.

13. On 24.1.2013, the following day of the occurrence, PW8 Ravi was interrogated by the police during investigation and his statement under Section 161 Cr.P.C. was recorded by the investigating official. Never had he whispered anything about the motive harboured by Sheela to murder his wife Savita. If at all Sheela had given criminal intimidation to cause death of Savita prior to the occurrence, PW8 would not have kept quiet as regards the role of Sheela on 24.1.2013 when he was interrogated by the police at the first instance. After 12 days of the occurrence, PW8 Ravi has suffered supplementary statement to the police. In our considered view, in order to strengthen the case of the prosecution, PW8 was prompted to suffer that Sheela had harboured an intention to commit the murder of Savita who had illicit relationship with PW2 Sanju. Such a supplementary statement

suffered by PW8 is found to be an afterthought. It would be highly improbable to rely on such a supplementary statement suffered by the star witness to hold that accused had harboured an intention to commit the murder. Further, there is no other evidence to corroborate the testimony of PW8 Ravi. Therefore, in our considered view, the motive attributed to Sheela by PW8 Ravi was not established beyond reasonable doubt.

14. The evidence of PW2 Sanju does not in any way indicate the complexity of the accused in the crime of murder of Savita. Therefore, his testimony, in our considered view, does not, in any way, help the prosecution to establish the charge framed against the accused.

15. Let us now take up the disclosure statement allegedly suffered by accused Vinod @ Pillu. On the basis of admissible portion Ex.P12 in the disclosure statement suffered by Vinod @ Pillu, an iron rod was allegedly recovered from an open water drain. As rightly observed by the trial Court, iron rod was admittedly recovered from a public place which was accessible to all. It is not as if the iron rod recovered at the instance of accused Vinod @ Pillu was found stained with blood and the group of blood found on the iron rod matched with the blood of the deceased. Mere recovery of iron rod from a public place does not, in any way, advance the case of the prosecution. Further, the recovery of iron rod from a public place which also does not contain any blood cannot at all be a basis to connect accused Vinod @ Pillu to the crime of murder. In our considered view, the trial Court has rightly doubted the recovery of iron rod sought to be projected by the prosecution to involve accused Vinod @ Pillu to the

crime.

16. Let us now take up the telephone call details projected by the prosecution to rope in the accused to the crime of murder of Savita. There was no substantial evidence to connect accused Vinod @ Langda and accused Vinod @ Pillu to the crime of murder. It was purely based on the disclosure statement suffered by Sheela that those two accused had been roped in. As per the recovery memo Ex.PN, the IMIE Number of said mobile phone were 910049004025974 and 910049004025975. But as per call details, the IMIE Number was referred as 910049005025975. As rightly pointed out by learned trial Judge, the IMIE Number for every mobile phone is a unique one. The IMIE number cannot be used in another mobile phone.

17. Of course, it is alleged by the prosecution that the accused used mobile phone bearing SIM Card No.9992617575 and 7206617922. No I.D. Proof was brought on record, nor was any official from the mobile phone company examined to establish that those Sim Cards were issued in the name of the accused persons or in the name of some other persons who had close connection with the accused. Therefore, in our considered view the evidence adduced by the prosecution as regards the call details also does not clinchingly establish that accused Vinod @ Pillu and Vinod @ Langda had interacted with accused Sheela in culmination of the criminal conspiracy hatched by them and the common intention they shared to murder Savita.

18. In the above facts and circumstances, we find that the State has not convinced us that the acquittal recorded by the trial Court warrants grant

of leave to prefer an appeal. Therefore, leave to appeal sought for by the State is declined.

19. The application stands dismissed accordingly.

(M. JEYAPPAUL)
JUDGE

November 8, 2016
Gulati

(TEJINDER SINGH DHINDSA)
JUDGE

Whether Reportable

No

Whether Speaking/Reasoned

Yes