

In the High Court of Punjab and Haryana at Chandigarh

Criminal Appeal-D No.971-DB of 2004

Date of Decision:-September 1, 2017

Sham Lal

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellant

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Sham Lal has filed the present appeal challenging his conviction under section 302, 452 and 506 of Indian Penal Code, 1860 (for short 'IPC') as recorded vide judgment dated 26.10.2004 passed by the Additional Sessions Judge, Kaithal. The trial Court sentenced the accused to undergo life imprisonment and to pay fine of ₹ 10,000/- for offence under section 302 IPC; to undergo rigorous imprisonment for two years and to pay a fine of ₹ 1,000/- for offence under section 452 IPC and to undergo rigorous imprisonment for one year for offence under section 506 IPC.
2. FIR No.22 (Ex.PD/1) dated 14.1.2002 under Section 302 of IPC was lodged at Police Station Sadar Kaithal on the basis of statement (Ex.PD) of Risala Ram

recorded by Inspector Ram Chander (PW-13). Risala Ram stated therein that his daughter Khazani was married to Ram Phal resident of Sisle, District Kaithal about 20 years ago and she was blessed with one daughter and three sons. His son-in-law Ram Phal was residing separately from his brothers for last 7-8 years and his brothers namely Prem Singh, Ram Kumar, Balbir and Birbhan are also residing separately with their children. The complainant alleged that his son-in-law Ram Phal was having illicit relations with wives of his brothers namely Faggo Devi wife of Prem and Kamali wife of Ram Kumar and this fact was disclosed by his daughter to his wife Sunehri, who further disclosed the same to him but they did not share this fact with anybody else and kept it a secret. The complainant stated therein that about 4-5 days ago he sent his son Som Parkash to village Sisle to inquire about well being of his daughter, who told him that Prem, Ram Kumar, Balbir, Bir Bhan, Ram Phal, Faggo Devi and Kamli used to harass Khazani on account of illicit relations of Ram Phal and though Khazni Devi had asked Ram Phal to desist from maintaining illicit relations but Ram Phal paid no heed and quarrelled with his daughter. The complainant further stated that on that day (14.1.2002) he received information at his village Habri that his daughter Khazani had died and upon which he along with his son Som Parkash and other co-villagers went to village Sisle to the house of his son-in- law Ram Phal where they saw Khazani lying dead in the courtyard having injuries with sharp edged weapon on the left side of her mouth, around neck, chest and on the back of head and one knife was also found stabbed in the chest of Khazani. Despite inquiries, he could not elicit any satisfying information from the brothers-in-law of Khazani or from the sisters-in-law of Khazani and thus he suspected that his son-in-law

Ram Phal, his daughter's brothers-in-law namely Prem, Ram Kumar, Balbir and Bir Bhan and her sisters-in-law namely Faggo Devi and Kamli had all murdered Khazani last night. The aforesaid statement (Ex.PD), in the shape of '*ruqa*', was sent to the police station and on the basis of which the FIR (Ex.PD/1) was recorded.

3. The police reached the place of occurrence and conducted inquest proceedings, prepared a rough site-plan of the place of occurrence, and recorded the statements of witnesses. After preliminary investigation, the dead body of Khazani was sent for post-mortem examination.
4. On 15.1.2002, the police also recorded statement (Ex.DA) of Santosh aged about 16 years daughter of the deceased, wherein she stated that they are four brothers and sisters and that she is the eldest. On 13.1.2002, at about 7:45 PM, her father had returned back home after finishing work and after taking meals he went to sleep in the '*bara*' (barn), where her brothers Jaipal and Jai Bhagwan had already gone as usual. She stated that she bolted the door from inside where she and her younger brother went to sleep while her mother was sleeping in the '*verandah*' on a cot. She stated therein that they had gone to sleep around 9:30 PM and at about 11:00 PM Sham Lal son of Hawa Singh resident of their village and who is their neighbour came to her room and lay on her cot and kissed her cheeks and also touched her breasts with bad intention. She stated that an electric bulb was glowing at that time. Upon hearing the creaking noise of the cot, her mother Khazani Devi woke up and came in the room. Sham Lal hid under her cot but a glass containing water which had been placed under the cot got knocked down, upon which Sham Lal

held my hand and gave a fist blow from under the cot and told me not to utter a word. My mother pulled him from under the cot and made him as well as me sit in the '*verandah*' under a bulb and asked Sham Lal as to why he had come upon which he replied that he had come to make Toshi 'understand'. Santosh alias Toshi further stated in her statement (Ex.DA) that her mother gave blows on her own chest and told Sham Lal that he was son of her real '*mousi*' (aunt) and that she will call her '*chacha*' (uncle) and tell them everything, upon which Sham Lal folded his hands, but her mother said that she will call '*Panchayat*' in the morning and tell them about his despicable conduct. Sham Lal, however replied that before she calls the '*Panchayat*', he will convene the '*Panchayat*' and upon which his mother called him '*dhed ka beej*' and told him to go back from where he had come and then Sham Lal went away by scaling the wall. Santosh further stated that after some time, during the night, Sham Lal came back after scaling the wall and upon seeing him, her mother rose from the cot but stepped on a '*tasla*' (small iron tub) and fell down and upon hearing the clanking noise she (Santosh) woke up and saw Sham Lal giving knife blows to her mother who was lying near the stairs. He told her (Santosh) that he had killed his mother and warned her (Santosh) not to disclose it to anybody lest she would also meet the same fate. Santosh further stated therein that Shyam Lal went away leaving the knife stabbed in the stomach of her mother and that due to fear she did not go out of the house. In the morning, at about 4:30 am, her father called her name and asked as to why the door was open but due to fear she did not disclose anything. Due to fear of the society and being scared of him, she could not disclose anything to anybody. She further stated therein that about 20-22 days back when her mother had gone to

visit her '*bua*' in village Kalokha, her father used to sleep in the barn and then, upon finding her alone, Sham Lal used to come and commit bad acts with her but she had not disclosed this fact to anybody. She further stated that prior to that he had given two letters to her asking her to come out from her house but she had destroyed those letters immediately by burning them. Upon seeing her mother being murdered during night by Sham Lal and upon his having threatened her, she lost her mental balance and was not in her senses, and when she regained her senses she disclosed everything to her aunt Rukmani wife of Balbir and Shakuntla wife of Bir Bhan. She further specifically stated therein that Sham Lal had murdered her mother Khazani Devi during the night in her presence and that her maternal grand father Risala had named her father Ram Phal, his uncles Prem, Ram Kumar, Bir Bhan and Balbir and her aunts Faggo and Kamli due to suspicion.

5. Upon conclusion of investigation, the police filed report under section 173 Cr.P.C. wherein all the accused named in the FIR were found innocent and Sham Lal was found to have murdered Smt. Khazani Devi.
6. The Additional Chief Judicial Magistrate, Kaithal before whom the challan against Sham Lal had been presented on 6.4.2002 committed the case to the Court of Sessions vide order dated 23.4.2002. The case was assigned to the Court of Additional Sessions Judge who upon finding sufficient grounds to presume that Sham Lal had committed offences punishable under section 452, 354, 302, 376 and 506 of IPC framed charges against the accused on 9.9.2002 for the said offences to which the accused pleaded not guilty and claimed trial.
7. The prosecution in order to establish charges framed against the accused

examined as many as 13 witnesses. PW-1 Head Constable Sant Lal, PW-2 Head Constable Mahender Singh, PW-3 Constable Sushil Kumar, PW-4 S.I. Surat Kant and PW-5 Head Constable Baru Ram are all formal official witnesses who tendered their affidavits Ex.PA, PB, PC and PD in evidence. PW-6 Ram Niwas, Photographer has proved the photographs Ex.P-1 to P-5 taken by him at the instance of police. PW-7 Santosh @ Toshni daughter of the deceased has stated in detail in tune with her statement Ex.DA which has been referred to in detail in earlier part of the judgment. PW-8 Puran who was joined in the investigation by the police stated that Sham Lal had got recovered a blood-stained shirt and a pant from his 'baithak' which had been kept under other clothes and that the recovered clothes were taken into possession vide recovery memo Ex.PE duly attested by him. PW-9 Krishan Lal stated that Sham Lal came to his house on 18.1.2002 and confessed that he had murdered Khazni Devi and also confessed that he had illicit relations with Santosh and on the night of 13.1.2002 when he went to the house of Santosh after scaling the wall of the house of Bhira, then Khazani Devi mother of Santosh woke up and caught both of them and turned her out of the house after abusing and that Sham Lal also confessed that shortly thereafter he murdered Khazni with a knife. PW-9 further stated that he is Ex-Sarpanch of village Sisla and that he handed over the accused to the police. PW-10 Constable Laxman proved the scaled site-plan of the place of occurrence, prepared by him, as Ex.PF. PW-12 Satbir Singh stated that on 14.1.2002 he along with Constable Baru Ram had taken the dead body of Khazani Devi to Government Hospital, Kaithal for post-mortem examination and that the doctor after post-mortem examination had handed over one parcel containing knife and another

parcel containing clothes of the deceased as well as the post-mortem report which he handed over to MHC. PW-13 Inspector Ram Chander, the Investigation Officer of the present case stated in detail in respect of the entire investigation conducted in the case right from taking down the statement (Ex.PD) of complainant Risala upto the filing of challan.

8. After conclusion of the prosecution evidence, statement of the accused was recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence was put to him to enable him to explain the same but he denied the entire prosecution case in toto. He further took a stand that he has been falsely implicated in connivance with Ram Phal who was accused in FIR No.22 dated 14.1.2002 and that the witnesses have stated falsely being inimical to his father and family. The accused in his defence tendered a copy of charge-sheet Ex.DB in the complaint case titled as Risala Ram versus Ram Phal and others in respect of the same incident i.e. murder of Smt. Khazani Devi. The accused also filed a copy of the complaint titled as Risala Ram versus Ram Phal and others as Ex.DC and closed his defence evidence.
9. The learned trial Court upon considering the facts and evidence on record held the accused guilty of having committed offences punishable under Sections 302, 452 and 506 of IPC vide judgment dated 26.10.2004. Feeling aggrieved against the same, the appellant has filed the present appeal.
- 10 The learned counsel for appellant has assailed the impugned judgement on the following grounds:

Medical evidence not in tune with the ocular version:

- (i) The learned counsel while referring to the medical evidence in the shape of post mortem report and the testimony of PW-11 Dr. Lajja Ram has submitted that the medical evidence is not in tune with the ocular version inasmuch as two of the injuries were found to be post mortem in nature and had been caused after about 4 hours of the death of deceased Smt. Khazani which are nowhere explained in the case of prosecution.

Disclosure statement highly doubtful:

- (ii) It was submitted that the alleged disclosure statement(Ex.PN) of accused leading to the recovery of blood stained clothes stands absolutely demolished from the fact that the colour of the clothes allegedly recovered at the instance of the accused, vide recovery memo Ex.PE, was entirely different than the colour of the clothes sent to the chemical examiner.

Extra judicial confession before a person not close to accused :

- (iii) The learned counsel has further submitted that police has made a vain attempt to fabricate evidence in the shape of extra judicial confession of the accused before PW-9 (Krishan Lal), though PW-9 cannot be said to be a man, either well connected or very close to the accused so as to make the accused believe that he could help him out or save him in any manner.

Credibility of PW-7 Santosh :

- (iv) The learned counsel for the appellant while further assailing the impugned judgment, has submitted that the case of the prosecution is based solely on the testimony of daughter of the deceased i.e. PW-7 Santosh *alias* Toshi and that her statement does not inspire confidence at all.

Story of murder rendered doubtful when story of rape not proved:

- (v) The learned counsel has also submitted that since a part of the statement of Santosh alias Toshi (PW-7) as regards the alleged rape and the love

letters given to her by the accused does not stand proved at all, therefore, there can hardly be any assurance that her remaining part of the statement regarding her mother having been murdered by the accused is correct and trustworthy.

11. The learned counsel for appellant has thus submitted that in view of the above referred infirmities in the case of prosecution, the impugned judgment cannot sustain and has prayed for acceptance of the appeal and consequently for acquittal of the accused.
12. On the other hand, the learned counsel representing the State has submitted that the impugned judgement is well reasoned, passed after duly appreciating the evidence on record and that the same does not suffer from any infirmity. The learned counsel has submitted that PW-7 is a very natural and truthful witness and her testimony can not be discarded on any count, and which fully establishes the case of prosecution. He further submitted that the extra-judicial confession made by accused before PW-9 Krishan Lal lends corroboration to the statement of PW-7 leaving no ground to doubt the case of prosecution.. The State counsel has thus prayed for dismissal of the appeal.
13. We have considered the rival submissions addressed before this court and have also perused the record of the case. Each of the submissions raised before this court is being discussed below in reference to the evidence on record.
14. To consider the contention of learned counsel that the ocular version put forth by PW-7 Santosh is not supported by medical evidence, it is imperative to refer to the postmortem report. PW-11 Dr. Lajja Ram who had conducted the postmortem examination on the dead body of Smt. Khazani has described the

injuries found on the dead body as follows:

- “1. There was incised wound size 9 cm x 1 cm over left cheek, extending from left angle of mouth. There was no fracture on exploration.
2. There was incised wound size 3 cm x .8 cm over upper part of neck on antero lateral aspect on right side, of neck. On exploration there were jugular vein and carotid artery completely cut.
3. Incised wound size 5 cm x 1 cm, 2 cm lower to injury no.2, which was obliquely placed, on deep exploration, muscles and blood vessels were cut.
4. Incised wound size 3 x 1 cm over mid of neck and the centre. On exploration, trachea was completely cut through and through.
5. There was incised wound 3 cm x 1 cm obliquely placed on left side of neck in the mid. On exploration, common carotid artery were completely cut.
6. In epigastric region knife was stabbed with wooden handle, which was seen outside the skin surface and rest part of knife was in side the body. Knife was extracted and handed over to police after seal. On exploration of this wound, which was incised and of size 1 x .2 cm in epigastric region. On deep exploration, omentum was showing, penetrating wound corresponding to stab site, which was caused by extracted knife, but no fresh bleeding from the said wound and no other external organ injury and bleeding was present. Skin wound and internal injury corresponding to this wound were post mortem in nature.
7. Two incised wounds size variable from 0.8 cm x 0.2 cm and 0.6cm x 0.2 cm. on right side of injury no.6, just sub cutaneous deep in nature and margins shows, no redness or erythema in subcutaneous tissues, and these injury were post mortem in nature.”

15. The learned counsel for appellant has referred to cross-examination of the aforesaid witness wherein he has stated that two of the injuries were postmortem in nature and had been caused at a different point of time than the

remaining injuries. The cross-examination of PW-11 is reproduced below for the sake of ready reference:

“It is correct that there are two types of death one Somatic death and molecular death. Somatic death means immediate death. Molecular death occurs after about 3-4 hours of somatic death. Somatic death means there is immediate stoppage of function of the vital organs like heart and brain. In molecular death, there is total stoppage of cellular function of the body. Post mortem injury means, the injury inflicted on the body after molecular death. Injuries no.6 and 7 were post mortem in nature. Injuries no.1 to 5 were caused at one time and injuries no.6 and 7 were caused at other time. Possibility of injuries on the person of deceased caused by different weapons by more than one weapon as the dimension of the injuries were different.

Court Question :

Whether the injuries on the person of deceased are possible by the knife Ex.P-14, if so describe the injuries possible to be caused.

Ans : All the injuries on the person of deceased could be caused by knife Ex.P14.”

16. Upon perusal of the aforesaid description of injuries as well as the cross-examination of the PW-11 Dr. Lajja Ram, we do find that the Doctor has categorically opined that injuries No.6 and 7 were postmortem in nature i.e. the same had been caused after Smt. Khazani Devi had died. A closer scrutiny of the injuries shows that while injury No.1 to 5 are large in size, the size of injury No.6 and 7 is relatively smaller. The sizes of the injuries are as follows:

Injury No.1 : 9 cm x 1 cm

Injury No.2 : 3 cm x .8 cm

Injury No.3 : 5 cm x 1 cm, 2 cm lower to injury No.2

Injury No.4 : 3 cm x 1 cm

Injury No.5 : 3 cm x 1 cm

Injury No.6 : 1 cm x 2 cm

Injury No.7 : 0.8 cm x 0.2 cm and 0.6 cm x 0.2 cm
on right side of injury No.6

17. It is further evident that injury No.6 is described in detail and it is specifically mentioned that the knife was extracted and a penetrating wound corresponding to stab site, which was caused by extracted knife but no fresh bleeding from the said wound. It is further opined that the skin wound and internal injury corresponding to this wound were post mortem in nature. Injury No.7 are two incised small wounds on the right side of injury No.6 and the same are also described as post mortem in nature. There is every possibility that the said injuries may have been caused when the knife was extracted out of the body. The knife had been extracted only at the time when the post mortem examination was conducted, which was after more than 24 hours of the occurrence. As such the opinion of the Doctor as regards the injuries No.6 and 7 being post mortem in nature would not demolish the case of the prosecution especially when injuries No.2 to 5 are all on the neck of the deceased and are incised wounds and the Doctor has opined that the cause of death was shock and haemorrhage due to multiple wounds present over neck region causing cut in major vessels in the neck and trachea.
- 18 It is well settled that estimation regarding the time of death on the basis of medical science cannot be said to be accurate to every minute and hour and it

is only broad estimation which can be made. In Mangu Khan & Ors. v. State of Rajasthan, 2005(1) Apex Criminal 509, the Hon'ble Supreme Court, while examining a similar issue wherein the post-mortem report mentioned that the death had occurred within 24 hours prior to post- mortem examination which did not match with the prosecution case held that physical condition of the body after death would depend on a large number of circumstances/factors and nothing can be said with certainty and that in determining the issue, various factors such as age and health condition of the deceased, climatic and atmospheric conditions of the place of occurrence and the conditions under which the body is preserved, are required to be considered. In Baso Prasad & Ors. v. State of Bihar, 2007(3) R.C.R.(Criminal) 994, while considering a similar issue, the Hon'ble Apex Court held that exact time of death cannot be established scientifically and precisely.

- 19 In Rakesh and another Vs. State of Madhya Pradesh, (2011) 9 SCC 698, the Hon'ble Supreme Court held as follows:

“It is a settled legal proposition that the ocular evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence. More so, the ocular testimony of a witness has a greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence if proved, the ocular evidence may be disbelieved.”

20. In the present case the material question is as to whether the injuries found on the person had been caused with the weapon with which the same are alleged

to have been caused and as to whether the same could have resulted in death of the deceased. The doctor in his examination-in-chief having categorically opined that the death was caused due to the injuries on the neck of the deceased which had resulted in cutting off the vessels and the trachea and that the same could have been caused with the recovered knife leaves no matter of doubt that the deceased died due to the injuries inflicted to her on neck with the help of the knife. There are injuries no. 2 to 5 which were found on neck. As such the opinion of the doctor that injury No. 6 and 7 were postmortem in nature loses significance. The submission raised in this regard by the learned counsel for the appellant is devoid of merits and is hereby repelled.

21. As regards the contention of the learned counsel for the appellant that the colour of the clothes recovered at the instance of the accused in pursuance of his disclosure statement Ex.PN, taken into possession vide recovery memo Ex.PE, is entirely different from the colour of the clothes as mentioned in the report of FSL (Ex.PQ), we do find that the said discrepancy has remained unresolved inasmuch as while the recovery memo Ex.PE describes the shirt to be white coloured and paints to be pigeon coloured, the report of FSL(Ex.PQ) describes the shirt and paints to be greenish in colour. Further as per the report of FSL, the same were found to be stained with human blood but no conclusive report has been made as regards the blood group. In view of the discrepancy in the description of the colours of the recovered clothes as mentioned by the recovery witness and as described in the report of FSL, it would not be safe to rely upon the said evidence.

22. Adverting to the contention of learned counsel for appellant regarding the

extra judicial confession made by the accused before PW-9 Krishan Lal, a perusal of the statement of PW-9 shows that he has specifically deposed that on 18.01.2002 when he was present in his house along with his brother Ram Chander then Sham Lal came to his house and confessed that he had murdered Khazani Devi and that he had illicit relations with Santosh. It is, however, worth noticing that while he stated that after the accused confessed his guilt he alongwith the accused went to the police and they met the police at the bus stand but PW-13 Inspector Ram Chander has stated that he had apprehended accused Sham Lal from the house of PW-9 Krishan Lal. It is well settled that extra-judicial confession is a weak type of evidence and care should be taken before accepting the same. In the present case the aforesaid inconsistency in statements of PW-9 and PW-13 would surely put the Court at caution and it would certainly be not safe to rely upon extra-judicial confession unless there is other convincing evidence on record to support the same.

23. The most important witness in the present case is PW-7 Santosh, on whose testimony the entire case hinges. Since her testimony has been seriously assailed, the same needs to be scrutinised minutely. As per statement of PW-7 Santosh, on 14.01.2002 she went to sleep around 9.30 p.m. after bolting the outer door of the house from inside. She has also stated that at about 11.30 p.m. accused Sham Lal, who is her cousin, entered her room and lay on her cot and kissed her and also touched her breasts. She stated that her mother had woken up upon hearing the creaking noise of her cot. PW-7 stated that her mother threatened the accused that she will call 'Panchayat' in the morning and tell them about his despicable conduct. Sham Lal went away by scaling the wall but returned back again during the night and she saw Sham Lal giving

knife blows to her mother. He told her (Santosh) that he had killed his mother and warned her (Santosh) not to disclose it to anybody lest she would also be murdered. PW-7 has deposed that Sham Lal, after killing her mother left through the main gate. Santosh further stated that in the morning, at about 4:30 am, her father called her name but due to fear and shame she did not disclose anything. In her statement she further stated that accused Sham Lal had come to her house about 20-22 days prior to the occurrence also and had raped her and again come on the next day and had again raped her. PW-7 stated that she had disclosed everything to her aunt Rukmani wife of Balbir and Shakuntla wife of Bir Bhan on 15.1.2002 at about 2.30 pm i.e. before her statement was recorded by the police.

24 Upon perusal of the entire statement of PW-7 and examining the same in context of other evidence led by prosecution we find that there are circumstances creating a doubt regarding credibility of PW-7, which are enumerated below:

- (i) PW-7, despite having witnessed the murder of her mother, as per case of prosecution, never raised alarm. So much so, she even chose to remain silent for 2 days though it was her own mother who had been murdered. Though one is expected to get shocked by such an incident but the explanation that she remained in a state of shock for two days does not sound very probable. Further, despite the fact that there was commotion on two occasions during the night when the accused came and also had a scuffle with deceased but it remains un-explained as to why the younger son of deceased was not attracted by the noise and didnt get up though he is stated to be sleeping in the same room where his sister PW-7 Santosh was sleeping.

- (ii) The occurrence had taken place in the month of January it remains unexplained as to why the deceased chose to sleep in the Veranda during peak winter season when there was a room in which children were sleeping.
- (iii) Though it is the case of prosecution that the father of PW-7 had come in the morning at about 4.30 am and called out her name but PW-7 has stated that she did not disclose anything. It sounds unnatural that the father despite having found something unusual at such early hour, as the outer door through which the accused left must have remained open and having called out the name of Santosh, did not choose to make any further enquiry, especially when ladies were sleeping inside.
- (iv) Further though the father of PW-7 is stated to have come to the house at about 4.30 AM and called out her name but did not notice the dead body of deceased which was lying in the courtyard though the court-yard, as per site-plan Ex.PF, is not a big court-yard. As per the case of prosecution, an electric bulb was glowing when Sham Lal was confronted by deceased when he had come on the first occasion during night and there is no mention anywhere that it was switched off thereafter. The manner in which PW-7 has described in detail the entire occurrence suggests that the courtyard remained illuminated throughout. In these circumstances it sounds all the more improbable that father of PW-7 didn't notice the dead-body or that his wife was not on her cot. Further, his coming there as early as 4.30 AM during peak winter month of January is also something which is unexplained.
- (v) The case of prosecution is that accused on both the occasions entered into the house of deceased by scaling wall from neighbouring house. Infact, the first time he is stated to have even

gone back by scaling the wall. The prosecution has not taken pains to explain as to how the accused could scale the wall as per convenience without attracting attention of occupants of the neighbouring house.

- (vi) PW-7 in her statement has specifically stated that before her statement was recorded by the police she had narrated entire occurrence to her aunts namely Rukmani and Shakuntla. However, the prosecution for reasons best known to it has chosen not to examine the said aunts of PW-7 though their testimony could have lent corroboration to some extent to the statement of PW-7.
- (vii) Though PW-7 in her statement has come out with a version that the accused even on earlier occasions had come to her house and raped her but when the prosecution wanted to get her medically examined she refused for the medical examination and as a result of which this said part of the story and the charges framed against accused under section 376 of IPC could not be established. Though PW-7 has herself asserted that accused had been coming to her house earlier and had physical relations with her but by shying away from getting her medical examination conducted, she has rendered her version doubtful.

25. Another aspect to be examined is as to whether PW-7 would have any motive for stating falsely. PW-7 is a young girl who lost her mother and her father alongwith other members of the family has been booked for murder of her mother. In case her father was convicted she would have virtually been left as an orphan with 3 younger brothers. Admittedly, it was not a joint family as the other brothers of his father were residing separately. As such, an apprehension in her mind of having to fend for herself and her young brothers in the absence

of her parents could have furnished a motive for her to make an attempt to save her father by coming out with a version that it was somebody else who had murdered her mother. In such circumstances, the Court is required to proceed very cautiously before choosing to accept the same, especially since it is a case based on statement of solitary witness.

26. The above stated circumstances, when examined in light of the fact that the other evidence relied upon by prosecution in the shape of disclosure statement and extra-judicial confession is also not trustworthy as already discussed in earlier part of this judgement lead us to conclude that the present case is not such where conviction of the accused can be justified solely on the basis of upon testimony of solitary witness PW-7 Santosh who, after two days of occurrence, had come out with a version totally contradictory to version in FIR. Neither does her statement inspire confidence nor is there any other convincing evidence to lend corroboration to her statement. The father of deceased, author of FIR, never accepted her version and went ahead with filing a private complaint against the accused named in FIR. At this stage, we are constrained to observe that the role of the police also left much to be desired. No effort, whatsoever, was made to lift fingerprints from the knife which was found pierced in the dead-body though the same could have furnished clinching evidence to nail the culprit. No effort seems to have been made to collect more evidence which could have been relevant. The statements of neighbours from whose common wall the accused scaled a number of times to enter the house of deceased ought to have been recorded. There is a possibility that they might have noticed someone scaling the wall on some

occasion as PW-7 stated that the accused had been coming earlier also. Such evidence could have been a clincher in the matter. Further, the location and size of '*bara*' where the husband of deceased used to sleep are not forthcoming and nor are the specific reasons for the husband to sleep in '*bara*', which were important in the case as the complainant in the initial version recorded in FIR, had named the husband alongwith his brothers and sisters-in-laws as accused. All these lacunae in the case of prosecution, coupled with the improbabilities discussed above, would certainly entitle the accused to benefit of doubt.

27. As a sequel to the discussion made above, the conviction of appellant can not sustain and appellant deserves to be acquitted. Consequently the appeal filed by accused is accepted and the impugned judgement is set aside. The appellant is acquitted of all the charges framed against him.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 1, 2017

pankaj/mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No