

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No.247-DB of 2010

Date of Decision:- September 13, 2017

Sikandar Mandal

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr. Gagneshwar Walia, Amicus Curiae, for the appellant.

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

Gurvinder Singh Gill, J.

1. Sikandar Mandal has filed this appeal challenging judgment dated 23.11.2009 passed by learned Sessions Judge, Panchkula vide which he has been held guilty for having committed offences punishable under Sections 302 and 201 of Indian Penal Code, 1860 (for short "IPC"). Order dated 26.11.2009 vide which the accused has been sentenced to undergo R.I. for life and to pay fine of ₹10,000/- for committing offence under Section 302 IPC; and to undergo R.I. for 4 years as well as to pay fine of ₹3,000/- for committing offence under Section 201 IPC, has also been assailed.

2. The allegations, as per case of prosecution, in nutshell are that the accused had killed his wife Sukhmani Devi and daughter Parvita and had thereafter burnt their dead bodies. The FIR (Ex.PN) was lodged on the basis of statement of PW-1 Rohit Kanwar, Assistant Manager HSIDC, I.T. Park, Sector 22, Panchkula who stated as follows:

“I am resident of above given address and posted as Assistant Manager in HSIDC. I am carrying some work in I.T Park, Sector 22, Panchkula and have engaged labour to do work in the park on the side of Ghaggar River. At about 4.10 PM I saw that one unknown lady, aged about 25-26 years with burnt face and tongue protuding with red blouse and half naked, was lying there. By her side, one small girl aged about 3 years with neck bending on one side, right leg burnt with right arm missing was also lying there. It appeared that someone had murdered them and had thrown the dead bodies in the pit. The faces of the dead bodies were burnt so as to conceal their identity. I was going to report the matter to you but you have met me. I got recorded my statement. I have heard the statement. Action be taken against unknown person.”

3. Pursuant to recording of aforesaid statement (Ex.PA), FIR No.237 was lodged at Police Station, Chandimandir, District Panchkula on 07.11.2008 for offences under Sections 302 and 201 IPC. The police thereafter went to the spot where the place of occurrence was photographed. Rough site plan Ex.PO of the place of recovery of dead body was prepared. Inquest proceedings were conducted. The dead bodies were sent for post mortem examination. Mould

of foot print was lifted from the spot. Statements of witnesses were recorded in terms of Section 161 Cr.P.C. Accused was arrested on 12.11.2008. Upon interrogation, the accused suffered a disclosure statement (Ex.PL) on 12.11.2008 to the effect that he could point out the place (Ex.PL) where he had murdered his wife and daughter and had burnt their dead bodies. He also suffered disclosure statement (Ex.PL) on 13.11.2008 to the effect that he had kept his right shoe which he was wearing on the day of occurrence as well as his blood stained clothes which had been washed, in his house in Sector 21, Panchkula and could get the same recovered. In pursuance of the said disclosure statement, the said articles were got recovered and were taken in possession vide recovery memo Ex.PL/1. The accused suffered another disclosure statement (Ex.PM) on 13.11.2008 to the effect that he could get recovered the rickshaw and the matchbox. In pursuance of the aforesaid disclosure statement, he got the rickshaw and matchbox recovered which were taken into possession vide recovery memo Ex.PM/1. Report of Forensic Science Laboratory, Haryana, Madhuban, Karnal (for short, 'FSL') was obtained as regard the right foot shoe recovered from the spot and the left foot shoe recovered from the house of the accused. Opinion was also obtained in respect of the partly burnt clothes, a plastic container and matchbox.

4. Upon conclusion of investigation, challan was presented in the Court of learned Judicial Magistrate Ist Class, Panchkula on 14.01.2009 who committed the case to the Court of Sessions. Learned Sessions Judge upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections under Sections 302 and 201 of IPC framed charges

against the accused to which the accused pleaded not guilty and claimed trial.

5. The prosecution, in order to establish charges framed against the accused examined as many as 19 witnesses. PW-1 Rohit Kanwar on whose statement FIR was lodged, stated in tune with his statement Ex.PA which has already been referred to in the earlier part of the judgment. PW-2 Manoj Kanwar stated that on 07.11.2008 while he was on duty in I.T. Park, their Assistant Manager informed him that two dead bodies in half burnt condition are lying in the area of I.T. Park in a ditch. He accompanied Rohit Kanwar to the spot and saw dead body of a lady aged about 25-26 years and a child about 3 years lying in a ditch in half burnt condition. PW-3 HC Pavitar Singh has deposed that in November, 2008 he was posted as MHC in Police Station, Chandimandir and that Inspector Baljeet Singh had deposited the case property with him. He deposed that as long as the case property remained in his possession, the same was not tampered with. PW-4 ASI Rajbir Singh stated that on 18.12.2008, when he was posted at Police Station Chandimandir, MHC Pavitar Singh had handed over the case property to him for depositing the same in FSL Madhuban and he accordingly deposited the same. He further deposed that as long as the case property remained with him he did not tamper with the same.
6. PW-5 Rakesh Kumar stated that he plies a three-wheeler in the area of Majri Chowk, Panchkula and that on 4/5.11.2008 he saw the accused going towards Nada Sahab along with his wife and child and upon inquiry the accused told him that they were going for a picnic. He further deposed that on 5.11.2008 he read in the newspaper that dead body of a young female and child were

lying in the area of I.T. Park. He went to the spot after reading it and noticed that the dead bodies appeared to be wife and child of the accused. PW-6 Dr. Rajiv Kapoor who had conducted post mortem examination on the dead body of Sukhman Devi and Parvita proved the post mortem reports as Ex.PB and Ex.PC, respectively. He opined that while the injuries found on the bodies were ante mortem, the burn injuries appeared to be post mortem in nature. He further opined that the cause of death was due to the injuries found on the bodies which were ante mortem.

7. PW-7 Vinod Kumar stated that he plies rickshaw in the area of Sector 4, Panchkula and that accused also used to ply rickshaw and used to reside in Maheshpur, adjoining to his house. He stated that accused used to beat his wife and they asked him not to beat her. He stated that on 05.11.2008 the accused told him that his wife along with his daughter went out of his house after taking ₹4000/-. He further stated that after 4-5 days it came to his notice that dead body of a lady and a child were found and he had advised the accused to inquire about the same but he told him that the dead bodies were not of his wife and child. PW-8 Baljinder Singh stated that he had prepared the site plan of occurrence and proved the same as Ex.PD. PW-9 EHC Rajesh Kumar stated that he had taken photographs of the place of occurrence and of dead bodies and proved the same as Ex.P-1 to Ex.P-20. PW-10 Anita Kadian, Senior Scientific Officer, Scene of Crime, Panchkula stated that upon receipt of telephonic information about the incident, she visited the place of occurrence and recorded her observations. PW-11 Dr. Deepali Aggarwal stated that she assisted Dr. Rajiv Kapoor (PW-6) for conducting post mortem

examination of Sukhmani Devi and Parvita and she agreed by the findings given by Dr. Rajiv Kapoor regarding injuries and cause of death.

8. PW-12 Parkash Kumar Mandal deposed that on 09.11.2008 upon receipt of a message from his brother-in-law Ramu Mandal, who is residing in Panchkula, that his sister and her daughter have been burnt by her brother-in-law Sikandar Mandal, he went to Government Hospital, Sector 6, Panchkula and identified the dead bodies. PW-13 ASI Satpal stated that on 07.11.2008, when he along with Inspector Baljeet Singh, the then SHO, ASI Kartar Singh and HC Surinder Singh were present near I.T. Park, Sector 23, Panchkula, Rohit Kanwar came there and made statement (Ex.PA) to SHO Baljeet Singh on the basis of which FIR was lodged. He further deposed that thereafter they went to the place of occurrence where dead bodies were found in burnt condition. He further deposed regarding the proceedings conducted at the spot pertaining to recovery of the broken bangles, blood stained earth, burnt clothes, one left shoe and plastic container. He also stated that on the same day two moulds, one of naked foot and one of shoe impression of right foot shoe were taken with help of plaster of paris.
9. PW-14 Chand Vir Hooda deposed that he is a nominated Municipal Councillor in Panchkula and that on 12.11.2008 the accused came to his shop and confessed having killed his wife and daughter and thereafter he produced the accused in Police Station Chandimandir. PW-15 EHC Bijender Singh stated that on 20.11.2008 he was posted in Police station Chandimandir and on the said day MHC Pavitar Singh had handed over case property to him to be deposited in FSL Madhuban and that as long as the case property remained in

his possession the same was not tampered with. PW-16 HC Suraj Mal deposed that on 11.11.2008 he was posted in Police Station, Chandimandir, and he remained associated in investigation of the case and under directions of ASI Kartar Singh he went to Government Hospital, Sector 6 for getting post mortem examination conducted on the dead body of Sukhmani Devi and Parvita. He further deposed that accused had made a disclosure statement Ex.PL on 13.11.2008 that he has committed the crime and kept concealed the clothes stained with blood and his shoe in the rented house in Village Maheshpur, Sector 21, Panchkula. He further stated that accused led the police party to disclosed place and got recovered the aforesaid articles. It is further stated that on the same day the accused made another disclosure statement Ex.PM and in pursuance of the same got the rickshaw used in the crime and the matchbox recovered. PW-17 SI Kartar Singh stated that on 07.11.2008 he was present along with Inspector Baljeet Singh and other police officials when complainant Rohit Kanwar got his statement Ex.PA recorded and deposed about the various documents prepared during the course of investigation and also as regards the accused making disclosure statements made by the accused and the recoveries in pursuance thereof.

10. PW-18 Inspector Harbhajan Singh deposed that on 18.12.2008 he was posted as SHO, Police Station, Chandimandir, and took over investigation of the case and recorded statements of witnesses under Section 161 Cr.P.C. He identified signatures of HC Pavitar Singh who had recorded the FIR (Ex.PN). He deposed that after completion of investigation he had prepared challan in the case. PW-19 Inspector Baljeet Singh stated that on 07.11.2008 he was posted

as SHO Police Station Chandimandir and on the said day, upon receipt of information from Rohit Kanwar regarding dead body of a lady and a child lying near I.T. Park, he went to I.T. Park. He stated that he summoned the photographer, experts of crime team and dog squad. He further stated regarding the entire proceedings conducted in the matter including the disclosure statements made by the accused and the recoveries made in pursuance thereof.

11. Upon conclusion of investigation, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence appearing against him was put to him to enable him to explain the same but the accused pleaded innocence and stated that he has been falsely implicated by the police just for the sake of solving their case and to shield the real culprit. The accused did not lead any evidence in his defence.
12. The learned trial Court, upon appreciating the evidence on record, found the accused guilty for having committed offences punishable under Sections 302 and 201 IPC and convicted him accordingly vide impugned judgment dated 23.11.2009. Aggrieved with the same, accused has preferred the present appeal.
13. Learned counsel for the appellant while assailing the impugned judgment has submitted that the present case is based solely on circumstantial evidence and that the evidence led by the prosecution is far from meeting the standards prescribed for establishing the case on the basis of circumstantial evidence. The learned counsel for the appellant has submitted that neither the dead bodies recovered could be identified properly and nor does the '*last seen*'

evidence in the shape of statement of PW-5 Rakesh Kumar inspire confidence. The learned counsel has further submitted that the alleged disclosure statements leading to recovery of Rickshaw and matchbox can hardly connect the accused with the crime and is infact a desperate attempt on the part of police to plant evidence. The learned counsel for the appellant has further submitted that even the extra judicial confession cannot be relied upon as there is no evidence to show that the accused knew PW-14 Chand Vir Hooda, so as to prompt him to confess his guilt. The learned counsel for the appellant submitted that the present case is a case of blind murder and the evidence collected by the police does not inspire confidence at all and is grossly insufficient to establish the charges framed against the accused. The learned counsel for the appellant thus prayed for acceptance of appeal and for setting aside the conviction of the appellant.

14. On the other hand learned counsel representing the State has submitted that in the present case though there is no eye-witness to the to the occurrence but the circumstantial evidence in the shape of '*last seen*' evidence, disclosure statement and extra judicial confession clearly point to one and only one conclusion that it is the accused who had committed the crime in question. The learned State counsel has further submitted that in the present case the police has conducted the investigation very scientifically inasmuch as plaster cast (mould) of the right foot was lifted from the place of occurrence and was got compared with the shoe recovered from the house of the accused and the same was found to be tallying as per the report of FSL. The State counsel has submitted that impugned judgment is based on the cogent evidence and does

not suffer from any infirmity and thus a prayer has been made for dismissal of the appeal.

15. We have considered the rival submissions addressed before this Court and with the assistance of able counsel have also perused the record of the case.
16. The first and foremost question in the present case would be as regards the identification of the dead bodies. The prosecution has examined PW-12 Parkash Kumar Mandal brother of deceased Sukhmani Devi who stated that upon receipt of information regarding murder of his sister and her daughter, he came to Panchkula and after reaching Government Hospital, Sector 6, Panchkula, he identified dead bodies of his sister and daughter. During the inquest proceedings, the dead bodies were identified by PW-7 Vinod Kumar, who is neighbour of the deceased. A perusal of the post mortem reports shows that the dead bodies were partly burnt. PW-6 Dr. Rajiv Kapoor who had conducted post mortem examination, nowhere stated that the bodies were not recognizable. So much so, despite his lengthy cross-examination he was not even given any suggestion that the bodies were unidentifiable. Such a suggestion was only given to another Dr. Deepali Aggarwal who had made a very brief statement that she assisted Dr. Rajiv Kapoor. In fact, Dr. Rajiv Kapoor himself stepped into the witness box and made a detailed deposition wherein he proved the post mortem reports Ex.PB and Ex.PC. No question having been put to him regarding identification, it does not lie in the mouth of the accused to raise an argument that the bodies were not in identifiable condition. The bodies having been duly identified by brother of the deceased leaves no room to doubt the identification of the dead bodies.

17. The prosecution relies upon the circumstantial evidence to prove its case. The circumstantial evidence relied upon is in the following form:

- i) 'last seen' evidence in the shape of statement of PW-5 Rakesh Kumar.
- ii) Disclosure statements made by accused Ex.PL & Ex.PM and recoveries effected in pursuance thereof.
- iii) Extra judicial confession made before PW-14 Chand Vir Hooda.
- iv) Scientific evidence especially the right foot mould lifted from the place of occurrence which as per the report of FSL tallied with the right shoe recovered from the house of the accused.

18. Each of the above referred pieces of evidence is being discussed individually. PW-5 Rakesh Kumar, who has been examined to prove the last seen evidence stated that he plies a three-wheeler in the area of Majri Chowk, Chandimandir and knew accused since the last two years, who is residing in Maheshpur, Sector 21, Panchkula. He has deposed that on 4/5.11.2008 he saw accused going towards Nada Sahab along with his wife and child and when he inquired from the accused as to where he was going, the accused told him that they were going for a picnic. A perusal of the post mortem reports Ex.PB and PC shows that the time that elapsed between death and post mortem is around 5-6 days. The post mortem examination was conducted on 11.11.2008 and which would mean that the death had occurred somewhere around 5/6.11.2008 and which is in tune with the statement of PW-5 Rakesh Kumar. During the

course of cross-examination, a suggestion was given to him that he had deposed falsely since he had enmity with Sikandar Mandal as he had borrowed money from him which he could not return. However, there is no evidence to show that the accused was into business of lending and the mere suggestion to this effect cannot be accepted to be true so as to discredit the witness. As such the testimony of PW-5 as regard having seen the accused going with his wife and child towards Nada Sahab on 04.05.2008 can well be accepted to be correct.

19. The prosecution also relies upon the disclosure statement Ex.PL made by accused on 13.11.2008 in the presence of PW-17 SI Kartar Singh PW-16 HC Suraj Mal to the effect that after murdering his wife and daughter he had kept concealed one of his shoe in his house while one of the shoe was left while running away from place of occurrence and that he could get the same recovered from his house and also his blood stained clothes which he had hidden after washing and drying. In pursuance of the said disclosure statement the accused led the police party to the disclosed place and got a black coloured shoe of right foot having laces recovered from his house. He also got recovered his clothes which were taken into possession vide recovery memo Ex.PL/1.
20. The accused suffered another disclosure statement Ex.PM on the same day before PW-17 SI Kartar Singh in the presence of HC Suraj Mal to the effect that he had concealed the rickshaw in which he had taken his wife and daughter and also the matchbox with which he had lit the fire and could get the same recovered from his house. In pursuance of the said statement, the

accused got the rickshaw and the matchbox recovered from his house which were taken into possession vide recovery memo Ex.PM/1. Both the aforesaid witnesses were cross-examined but their testimonies which are consistent on the material aspects regarding recovery of the aforesaid articles, could not be dented on any count. Another piece of evidence relied upon by prosecution is the report of FSL(Ex.PT) pertaining to comparison of Plaster Cast mould of right shoe lifted from the spot with the right shoe recovered from house of accused.

21. PW-19 Inspector Baljeet Singh after reaching the spot had summoned the photographer, experts of crime team and dog squad as well. PW-10 Anita Kadian, Senior Scientific Officer after inspecting the spot on 07.11.2008 made detailed observations including observation that struggle marks were seen on the ground near the dead bodies as there were broken plastic bangles, burnt hair and that ground soil was found to be disturbed. Plaster cast (moulds) of the foot and shoe impression were lifted from the place of occurrence and the same were sent to FSL for comparison with the right shoe recovered from the house of the accused. The left shoe was recovered from the place of occurrence itself. As per report of the FSL (Ex.PT) the left shoe and the right shoe recovered from house of accused were in agreement in respect of colour, design, shape, physical parameter, physical and microscopic appearance and it was opined that both the left and right shoes are of one pair. As regards the comparison of the plaster cast (mould) lifted from the spot of the right shoe and the right shoe recovered from the spot, it has been opined that the impression of plaster cast has been caused by the right foot shoe. The

aforesaid evidence of the foot print lifted from the spot which matches with the shoe recovered from the house of the accused is a clinching piece of evidence to connect the accused with the crime in question.

22. Furthermore, the extra judicial confession in the shape of statement of PW-14 Chand Vir Hooda who is a respectable person being a Municipal Councillor of the area is another piece of circumstantial evidence. PW-14 has deposed that the accused met him on 12.11.2008 at his shop and disclosed to him that about 4-5 days prior to 12.11.2008 he took his wife and his daughter towards I.T. Park and killed them with the help of stones and later on set them ablaze. He further stated that thereafter he produced the accused in Police Station Chandimandir where his statement was recorded. During cross-examination he stated that his father was a Military man and is presently working in BEL factory at Panchkula. He stated that he is married and is running a departmental store under the name of "Hooda Departmental Store" in Village Maheshpur and regularly sits at his shop, run by him exclusively. Though, in his statement there is nothing to suggest that the accused was very close acquainted with PW-14 but the fact that he is a respectable of the area being Municipal Councillor could certainly prompt the accused to confess his guilt before him in a hope that he would save him from the consequences. The witness was cross-examined but his testimony could not be shattered on any count so as to doubt the credibility.

23. It is no doubt well settled that extra-judicial confession is a weak type of evidence but in the present case there are other circumstances which lend corroboration to the aforesaid extra judicial confession. The '*last seen*'

evidence as well as the disclosure statements made by the accused leading to recoveries Ex.PL, PL, PL/1, PM, PM/1 coupled with the fact that the foot impression mould taken from the place of occurrence near the dead bodies matched with the shoe recovered from the house of the accused clearly points out towards the guilt of the accused. The prosecution has been fully successful in establishing all the links in the chain of circumstantial evidence which is complete in all regards. As such, we have no hesitation in affirming the findings of the trial Court to the effect that it is the accused, who had murdered his wife and daughter and had then set them on fire in an attempt to destroy the evidence and had thus rendered himself liable for having committed offences punishable under Sections 302 and 201 IPC.

24. No other argument has been raised or urged before this Court on behalf of the accused.
25. As an upshot of our discussion made above, we do not find any infirmity in the impugned judgment and the same is upheld. There is no merit in this appeal and the same is hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

September 13, 2017
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No