

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-262-DB of 2005
Date of decision : 2.5.2017

BhanmatiAppellant

v.

State of HaryanaRespondent

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Gaurav Garg Dhuriwala, Legal Aid Counsel
for the appellant

Mr. Gagandeep Singh Wasu, Addl. AG, Haryana

Mahesh Grover, J. (Oral)

The appellant has filed this appeal questioning her conviction and sentence awarded by the learned trial Court for having committed the murder of a young boy aged 4 to 5 years pursuant to which FIR No. 203 dated 12.12.2002 under Sections 302/201 IPC was registered at Police station Julana, District Jind, leading to investigation and trial of the appellant to result in conviction and sentence, which may be extracted here below :

<i>Under Section</i>	<i>Punishment</i>	<i>Fine</i>	<i>In default</i>
302 IPC	Imprisonment for life	₹ 5,000/-	Six months
201 IPC	Imprisonment for two years	₹ 1,000/-	

(Both the sentences were ordered to be run concurrently.)

On 11.12.2002 the deceased, a young boy of 4-5 years, named

Rahul @ Balram went missing from his house, resulting in intensive but

futile search in and around the village. Finally, his dead body was recovered from a well on the next day i.e. on 12.12.2002.

FIR was registered, followed by investigation where, according to the prosecution, the appellant confessed her guilt, in the presence of numerous persons and also got recovered the weapon of offence (gandasi) besides, leading the investigating team to the place of occurrence, which was a fodder room, situated within the compound of the house itself. The appellant, allegedly, also narrated the sequence and the manner of committing the gruesome murder of the young boy. Her confessional statement, in this regard, is on record as Ex.PL. She confessed that on 11.12.2002, she threw the ball of her dewar's (brother-in law's) son Rahul @ Balram in her fodder room and when he entered the room to retrieve it, she gave a gandasi blow on his neck. In order to stifle his cry, she tied his mouth with a piece of cloth and repeated gandasi blows 7-8 times on his mouth and temporal region. Thereafter, she concealed the dead body underneath the fodder in the room itself and after washing the gandasi and wrapping it in a piece of cloths, she concealed the same also beneath the fodder. She then lifted the blood stained grass (turi), mixed it with ash and threw it in the heap of cow dung, and went out for washing chappal and the suit, which she was wearing and threw the used water in the drain. At about 6 to 6.30 p.m. when the search for deceased was being made in the village, she took the dead body, wrapped in a shawl and threw it in a well, known as 'jori wala well'. After that, she again washed her suit and set it out to dry on a peg in her residential room. She concealed the chappal underneath the cot. Apart from the confessional statement, the Investigating Officer also got the recoveries of the gandasi, chappals, the suit, the clothes worn by the

deceased and all these were sent for chemical examination to the Forensic Science Laboratory, which reported its conclusion as below :

“Laboratory examinations were carried out to detect the presence of blood on the exhibits. Blood thus detected was subjected to serological tests to determine its species of origin. Based upon these examinations the results obtained are given below :-

1. Exhibit-1a (Shirt), exhibit-1b (Pant), exhibit-1c (Sweater); exhibit-1d (Tabiz) and exhibit-5 (gandasi).
2. Blood was detected in exhibit -2 (Blood Stained Earth).
3. Traces of blood too small for serological tests were detected on exhibit-3 (Chappals) and piece of cloth in exhibit-1.
4. Blood could not be detected on exhibit-6a (Lady's Shirt); exhibit-6b (Salwar); exhibit-7 (Hawai chappal) and exhibit-8 (Blood Scrapped from wall).

Note : 1. Results of serological analysis of blood are attached herewith.

2. After the examinations the exhibit(s) along with their/the original wrappers has/have been sealed with the seal of FSLF Serol.”

After conclusion of the investigation, all the recoveries and the reports were completed. The appellant was challaned for the offences punishable under Sections 302 and 201 IPC. She was charged appropriately by the learned trial Court and faced trial. In her defence under Section 313 Cr.P.C., although, she initially pleaded false implication but her statement makes an interesting reading and is, thus, extracted here below :

“I am a first offender who was never booked by the police in any other case of criminal nature. I am victim of a disease called schizophrenia. I suffer from periodical bouts of acute depression. In such state of mind, I lose control over my actions. I have a large family and they all depend too heavily on my services. Therefore, I pray to the Court to treat my case with leniency and let me off with the sentence already undergone by me in this case.”

On the strength of the evidence produced by the prosecution,

the learned trial Court proceeded to convict the appellant, the detail of which are given above.

Although the appeal was filed through Mr. Surender Deswal, Advocate but he failed to appear, despite the fact that the case was shown in the regular cause list and eventually the Court was constrained to appoint Mr. Gaurav Garg Dhuriwala, Advocate as Legal Aid Counsel on behalf of the appellant, who is now assisting the Court.

Learned counsel for the appellant contends with reference to the recoveries that at some places it has been mentioned that blood stained grass was lifted but the report of the Forensic Science Laboratory shows that it was the earth which was sent for sampling. Similar is the statement of the Investigating Officer. From these, he wants the Court to infer that the recovery effected from the appellant cannot be accepted with certainty, in which eventuality, the benefit of doubt essentially goes to the accused. That apart, it has been contended that a large family was residing in the house, which would make it impossible to commit an offence within the house, without attracting attention of any one.

Learned State counsel points out to the evidence on record to contend that conviction and sentence awarded by the learned trial Court is correct and does not warrant any interference. He has also referred to the inquest report, FSL report, the recoveries effected from the well as also the house and the fodder room, where the offence was committed and has contended that a cumulative appraisal of all these would lead to a conclusion, arrived at by the learned trial Court and there would be no scope of interference.

We have heard learned counsel for the parties and have

considered the material on record.

The statement of the appellant before the learned trial Court is in itself a give away. She has flatly conceded to the offence by pleading herself to be the first offender and explained it bouts of fits on account of schizophrenia. However, no such evidence has been led by the appellant to substantiate such a a mental condition and also the fact that when she committed the brutal act, she was in the grip of a fit and was unable to understand the consequences of her act.

It was easy for the Court to discard the confessional statement as it was made in the police custody but her defence statement in the face of the “confessional statement before the police” assumes significance particularly, when it was not denied and disowned by the appellant to be under coercion. The post mortem report indicates the injuries numbering nine, which also correspond to the narration given out by the appellant herself of giving 7-8 blows repeatedly on the temporal region, mouth and neck of the deceased. The wounds on the person of the deceased were also smeared with traces of fodder and grass, which would be a natural consequence, considering the place of occurrence in a room stuffed with fodder. The nature of injuries correspond to the weapon of offence, recovered at the instance of the appellant. The body was also hidden under the fodder, which would explain the presence of grass and fodder on the wounds. The stains collected from the place of occurrence, from the earth and the chappal, have been established to be containing human blood though disintegrated.

Learned counsel for the appellant contends that only blood stained grass was collected and this is an improvement in the prosecution

version, enough to discard it, rather we are unable to agree with the contention of learned counsel for the appellant as this is too insignificant a variance. Once the grass etc. has been collected, eventually some earth would have also been made a part of the sample. Even otherwise, lifting the blood from the ground would also invite such an inference. When testimony is being recorded, a witness is likely to use a more general expression, therefore, this plea of the appellant merits rejection.

The serological analysis of the blood extracted here below :

<u>“Serial No.</u>	<u>Name of exhibit</u>	<u>Origin</u>	<u>Group</u>
1a.	Shirt	Material Disintegrated	
1b.	Pant	Material Disintegrated	
1c.	Sweater	Material Disintegrated	
1d.	Tabiz	Material Disintegrated	
2.	Blood Stained Earth	Human	Inconclusive
5.	Gandasi	Human	Inconclusive”

Learned counsel for the appellant contends that this is inconclusive and the benefit should go to the appellant.

We do not agree with the contention raised by learned counsel for the appellant as it establishes the presence of blood, though the blood group disintegrated, which would be just natural as the samples were sent, after some delay in January, though collected earlier.

All these pieces of evidence coupled with the statement, made by the appellant, if construed together would lead to an inescapable conclusion of her being a culprit and the manner in which she went on dressing the whole scene, also conclusively point out to the culpability in destroying the evidence. Therefore, the conviction under Sections 302 and

201 IPC has been rightly recorded by the learned trial Court with which we would have no reason to differ and accordingly, the appeal filed by the appellant stands dismissed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

2.5.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No