

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

CRA-D-374-DB-2011

Date of decision: 12.05.2017

Kusum

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Kamaljit Singh Dhillon, Advocate as
Legal Aid counsel for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against judgment and order of sentence dated 17.12.2010 passed by the Court of learned Additional Sessions Judge, Faridabad, vide which he had convicted accused-Kusum for an offence under Section 302 of the Indian Penal Code (“IPC” – for

short) and sentenced her to undergo rigorous imprisonment for life and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.

The accused-convict, who is appellant before this Court prays that the appeal filed by her be accepted, the impugned judgment of conviction and order of sentence be set aside and she be acquitted of the charge framed against her.

Briefly stated, the prosecution story is that complainant Durbal Ram son of Meghu Ram resident of Village Damodarpur, Police Station, Mubarakpur, District Azamgarh, U.P., aged about 56 years, a labourer by avocation had three sons and a daughter, one of his sons namely Ramjit aged about 25 years was married with accused-Kusum daughter of Devki Parshad, resident of village Maharajpur, Police Station Kandarapur, District Azamgarh about six years prior to the incident. The couple had been residing in accommodation at Sector 27, but had shifted to another rented accommodation in Kaviraj Colony, Mewla Maharajpur 7/8 days prior to occurrence. There used to remain quarrel between husband and wife and for that reason the earlier landlord had got the tenanted premises vacated.

On 24.09.2009 at about 7 a.m. Rakhi, younger sister of Kusum informed complainant-Durbal Ram telephonically that Ramjit had died, accordingly, the complainant alongwith his nephew Rakesh and neighbour Anil and Baliram went to the house of deceased. On being inquired Kusum, who was crying told that Ramjit had died due to suffering

some attack after taking liquor, as such, complainant had given that very reason of death of Ramjit in his statement to the police. However on 25.09.2009 dead body of Ramjit was cremated and on the next day, complainant alongwith his nephews Rakesh and Ramchander inquired from Kusum and then they came to know that Kusum had murdered Ramjit on 23/24.09.2009 by strangulating him, since Ramjit was in intoxicated condition. Kusum fled from the home, thereafter, Durbal Ram had got his statement recorded with Inspector/SHO Dalbir Singh (hereinafter referred to as the Investigating Officer/I.O.), Police Station, Surajkund on 27.09.2009 in the evening, when such police officer alongwith his associates had come to the spot for verification of dead body of Ramjit. Such statement of complainant Ex.PC was thumb marked by the complainant and his thumb impression was attested by the Investigating Officer. Finding that from statement offence under Section 302 IPC was disclosed, so the Investigating Officer put his endorsement Ex.PK thereunder and sent ruqa to police station through C.Rajbir Singh, on the basis of which formal FIR Ex.PH was recorded at police station concerned.

The Investigating Officer recorded statements of witnesses, carried out spot inspection and prepared rough site plan Ex.PK/1.

On 30.09.2009 Inspector Dalbir Singh heading a police party was present at Anangpur Chowk, when Rajpal son of Niyadar came and sought permission to produce Kusum. Lady Constable Anju Bala and HC Lajpat were with Inspector Dalbir Singh at that time. After sometime

Kusum was brought there by Rajpal. She was formally arrested in this case and was interrogated. During the course of such interrogation, she suffered a disclosure statement Ex.PF admitting her involvement in the crime and stated that she could get two *CHUNNIES* used for committing the crime, besides, a bed sheet which she had concealed in a plot near Kaviraj Colony. The accused while in police custody led the police party to the disclosed place and got recovered, bed sheet Ex.P4 and two *CHUNNIES* Ex.P5 & Ex.P6, those were converted into parcels and sealed with seal impression "DS". Those parcels were taken into possession vide Ex.PJ. The Investigating Officer prepared rough site plan of place of recovery Ex.PL.

On 02.10.2009 ASI Naresh Kumar produced before the Investigating Officer the call details Ex.P7 pertaining to mobile of Kusum-accused. On 04.10.2009 while Inspector Dalbir Singh heading a police party was present at Ankhir Chowk, there he received a secret information that accused Siri Ram was present at Plot No.28 at Sector 21-A, Faridabad. The police party reached there and apprehended accused Siri Ram. Such accused was interrogated, during course of which he suffered a disclosure statement Ex.PG admitting his involvement in the crime saying that there used to be telephonic calls between him and Kusum giving details of those calls which had already been collected during the course of investigation. The Investigating Officer had got prepared a scaled site plan of the place of incident. He received photographs of the place of the incident, which had been got clicked from

the photographer. He recorded statements of witnesses.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Faridabad. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Section 302 IPC was exclusively triable by the Court of Sessions, the Chief Judicial Magistrate, Faridabad committed the case to the Court of learned Sessions Judge, Faridabad vide his order dated 10.12.2009 from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

On receipt of the case, finding a prima facie case, charge for offences under Sections 102-B and 302 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as fifteen witnesses as per details below:-

PW-1 Rajpal Singh deposed that on 20.11.2009 accused-Kusum and some other tenants had come to his colony in village Mewla Maharajpur and had informed that her husband had died due to drinking. Two/three other tenants were also with her; that he asked her to call her relatives, on the telephonic call made by the accused, the persons from the company where deceased used to work came, Mama's

(maternal uncle's) son of deceased also reached there; that he saw the dead body and came to him and told that murder had been committed. According to this witness he asked him to report the matter to the police and after saying so, he went for work. When he reached back by that time dead body was removed. The witness stated that he does not know anything else. Learned Public Prosecutor came up with a request for declaring the witness as hostile for the reason that he was suppressing truth, his such request was accepted and Public Prosecutor was permitted to cross-examine the witness. The witness was confronted with the statement made by him to the police.

PW-2 Durbal Ram-complainant supported the prosecution version on material aspects. However learned Public Prosecutor came up with a request to declare him hostile stating that he had not disclosed the entire truth, request was allowed and he was allowed to put questions to the witness in the form of cross-examination, wherein the witness admitted the remaining part of the prosecution case, which he had not earlier supported clearly in his examination-in-chief.

PW-3 Ram Chander stated that he is doing his own work of preparing air compressor. Ramjit-deceased was son of his Mama (maternal uncle), who used to work in a company in Sector 27-A and his marriage was performed with Kusum-accused about 5/6 years earlier. Ramjit (since deceased) used to reside with his wife in the company itself for the last three years, they had a child of about one year, but they used to quarrel, so the company people had ousted them

and they had then shifted to Kaviraj Colony in Mewla Maharajpur 3-4 days prior to the occurrence. According to this witness on night of 23.09.2009 Ramjit was murdered by his wife Kusum who had administered some poisonous substance and strangled him; that on coming to know about that he had reached at the spot where dead body was ready for being taking for cremation. Dead body was lying outside the room and when the cloth from the dead body was removed, he noticed marks of strangulation on his throat and injury marks on the back of head; that he had inquired from Kusum about cause of death and she had told that after consuming liquor, Ramjit had suffered a fit & fell down and died. Accordingly, he went to the police post and informed the police, police came to the spot and prepared Panchnama. Dead body was taken to B.K. Hospital, his Mama Durbal Ram came to Faridabad on 25.09.2009, then they had gone to Police Post Mewla Maharajpur, police had got conducted post-mortem examination on the dead body of Ramjit.

PW-4 Sarwan Kumar, Draughtsman deposed that on 23.10.2009 he was posted as such in CIA, Faridabad, he had gone to the spot and prepared site plan Ex.PD on the direction and demarcation of Inspector Dalbir Singh, SHO, Police Station Surajkund.

PW-5 Naresh Kumar ASI, who on 24.09.2009, while posted as ASI at Police Post, Sector 46, Faridabad, had carried out inquest proceedings under Section 174 Cr.P.C. on the dead body of Ramjit proved report Ex.PE stating, that he had sent the dead body to

B.K. Hospital for post-mortem and had moved an application in that regard; that after post-mortem examination doctor handed over one parcel containing viscera, another sealed parcel containing clothes of deceased and one envelope containing documents and sample seal. This witness further stated that he had deposited such parcels/articles in the Malkhana and had handed over the dead body of Ramjit to his relatives Durbal Ram and Rakesh Kumar.

PW-6 SI Pritam Singh, Photographer in CRO Branch, Police Line, Faridabad stated that on 24.09.2009 he had gone to the spot and taken three photographs of the dead body of one male and he proved photographs Ex.P1 to Ex.P3.

PW-7 C. Narender Kumar on 27.09.2009, while he was posted as Constable had delivered special reports to Illaqa Magistrate and higher Police Officers.

PW-8 C. Satyender Singh a formal witness tendered into evidence his affidavit Ex.PW8/A.

PW-9 Lady Constable Annu Bala, who was member of the police party on 30.09.2009 headed by Inspector Dalbir Singh deposed regarding arrest of accused-Kusum and regarding disclosure statement suffered by accused-Kusum and proved disclosure statement Ex.PF.

PW-10 Kuber Ram stated that accused-Kusum is daughter of his younger brother Devki Parsad, who was married with Ramjit about six years earlier. He deposed regarding strained relations between accused-Kusum and Ramjit-deceased. This witness further

deposed that on 24.09.2009 Rakhi, sister of Kusum-accused came to his place and told him that Ramjit had expired at night due to excessive drinking and his last rites were to be performed; that Rakhi used to address him as Papa; that he went to the room in Mewla Maharajpur where Ramjit had shifted and noticed that Ramjit was lying dead, a cloth was lying on the dead body. The landlord told them to take out the dead body and perform the last rites; that they were making preparation for last rites; that when Ram Chander, Mama's son of Ramjit arrived there and told them that dead body be not removed; that he asked the reason, he (Ram Chander) told that family members of Ramjit were likely to arrive soon and only on their coming, last rites be performed; that Ram Chander went to the police post and brought the police, later on he had come to know that Ramjit had been strangulated after giving him poison, when he had taken a lot of liquor. As accused-Kusum and deceased-Ramjit only used to reside in the room, therefore, only accused-Kusum could kill Ramjit.

PW-11 EHC Krishan Singh, who was member of the police party and was associated with the investigation of the case deposed regarding arrest of accused-Siri Ram and his suffering disclosure statement.

PW-12 SI Gila Ram on 27.09.2009 was posted as ASI on that day, on receipt of ruqa sent by Inspector Dalbir Singh had recorded formal FIR Ex.PH and sent special reports, deposed in that regard.

PW-13 HC Umesh Kumar stated that on 27.09.2009, he

was posted as MHC, on that day Inspector Dalbir Singh had deposited property relating to this case including viscera, clothes, envelope etc. all sealed with inscription "MSBKH" and on 14.10.2009 he handed over the case property to C. Satender for depositing at FSL, Madhuban vide RC No.350; that after depositing the case property at FSL, C. Satender produced the receipt to him. He stated that he had not tampered with the parcels and had not allowed anybody else to do so.

PW-14 Inspector Dalbir Singh, Investigating Officer of this case deposed regarding the investigation conducted by him.

PW-15 Dr. Ishwar Singh, Deputy Civil Surgeon, Bhiwani, deposed that on 25.09.2009 he was posted as Medical Officer in B.K. Hospital, Faridabad. On that day he conducted post-mortem examination on the dead body of Ramjit son of Durbal Ram, 25 years male resident of Damodarpur, District Azamgarh (UP), which was identified by Durbal Ram and Rakesh Kumar both residents of Damodarpur (UP). His observations were as under:-

A reddish brown ligature mark size 2.5 cm broad with irregular margins was present over the anterior of thyroid cartilage passing 7 cm below right angle of mandible and 7.5 cm below left angle of mandible going posteriorly joins below nape of neck at hair line, thyroid cartilage and cricoid cartilages were fractured larynx and trachea contained blood.

Injuries:-

1. *A reddish brown abrasion size 2 cm x 1.5 cm over right side of forehead was present. Echymosis was present.*
2. *A reddish brown abrasion size 2.5 cm x 1.5 cm was present over the left shoulder joint on dissection echymosis was present.*
3. *A reddish brown abrasion size 2.5 cm x 2 cm over right side of shoulder joint.*

Condition:-

A well built dead body of male was wearing a brownish baniyan, greenish coloured underwear, black dora in neck, black dora in right wrist joint.

Eyes and mouth were closed. Rigor mortis were in disappearing stage. Rest part of the body was healthy.

Opinion:-

In his opinion, the cause of death was asphyxia, which was due to constricted force and encircling around the neck and was sufficient to cause death in ordinary course of nature. All injuries were ante mortem in nature.

Probable time between injury and death was within few minutes and probable time between death and post-mortem examination was within 18 to 48 hours. Followings were handed over to the police:-

1. *Well stitched dead body.*
2. *A packet sealed at six places with seal MS/BKH containing belongings of the deceased.*

3. *Copy of PMR No.IS/BK/02/09 dated 25.09.2009.*
4. *A parcel sealed at six places with seal MS/BKH containing two jars and two vials containing viscera, blood and hyper tonic saline used as preservative.*
5. *An envelope sealed at five places with seal MS/BKH addressed to Chemical Examiner containing:*
 - i. *Forwarding letter,*
 - ii. *Copy of PMR No.IS/BK/02/09 dated 25.09.2009,*
 - iii. *Police papers paging 1 to 20, duly signed by him,*
 - iv. *A sample seal as MS/BKH, duly signed by him*
6. *A sample seal as MS/BKH, duly signed by him.*

He also proved carbon copy of post-mortem report as Ex.PO and police request for conducting post-mortem as Ex.PO/1.

Learned Public Prosecutor tendered FSL reports Ex.PB and Ex.PB/1 and closed the prosecution evidence.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced accused-Kusum mentioned above, whereas her co-accused Siri Ram was acquitted of the charge framed against him, which left her

aggrieved and she has filed the present appeal.

We have heard learned counsel for the appellant and learned Additional Advocate General, Haryana, besides, going through the record and we find that there is absolutely no merit in the appeal. Though in the instant case no direct evidence of the incident is available and case is based upon circumstantial evidence, but then chain of events is complete and the evidence produced is in consonance with the hypothesis of the guilt of the accused and not with her innocence. It is certainly a case of homicidal death and not one of suicide. From medical evidence in the form of statement of Dr. Ishwar Singh (PW-15) who had conducted the post-mortem examination on dead body of Ramjit, it comes out that he had observed a reddish brown ligature mark size 2.5 cm broad with irregular margins over the anterior of thyroid cartilage passing 7 cm below right angle of mandible and 7.5 cm below left angle of mandible going posteriorly joining below nape of neck at hair line thyroid cartilage. As per opinion given by the doctor cause of death was asphyxia which was due to constricted force and encircling around the neck and was sufficient to cause death in ordinary course of nature. That all the injuries were ante mortem in nature, that means the deceased had been strangled to death and the defence version put up by the accused-convict that he had died due to excessive drinking is palpably wrong.

Now the next question arises as to who had strangled deceased to death, the natural inference to be drawn is that it was

accused-Kusum. As it comes out from the record that deceased and Kusum-accused had been residing together in rented accommodation, when Ramjit was strangled to death on 24.09.2009 at night in the matrimonial home. It was for accused-Kusum being wife of the deceased to explain as to how death of Ramjit had taken place. Section 106 of the Indian Evidence Act places the burden of explaining that upon her. But she has miserably failed to do so, rather she has been telling lies as regards reason and manner of death of deceased, therefore, the natural inference to be drawn is that it was accused-Kusum, who had committed the murder of her husband-Ramjit. As it comes out from the record relations between Ramjit and Kusum were strained and they used to quarrel with each other quite often that would have been motive for accused-Kusum to commit crime of murder of her husband. Accused-Kusum on being arrested and interrogated by Inspector Dalbir Singh suffered a disclosure statement that she could get recovered two *CHUNNIES* used for committing murder, apart from bed-sheet regarding which no one else but only she knew. She had got two *CHUNNIES* and a bed-sheet recovered from her possession. These *CHUNNIES* are said to have been used for strangulating Ramjit, which corroborates the prosecution story. Further, injury marks had been detected on neck of deceased, which goes to show that he had met with violent end.

Thus prosecution has successfully proved charge against the accused beyond shadow of reasonable doubt. The judgment of

conviction and order of sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary direction in that regard be issued to the quarter concerned.

12.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |