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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-290-DB-2012
Date of Decision : June 2,2017

Surender Kumar alias Sonu Appellant

Versus

State of Haryana Respondent

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

Present Mr. Prateek Rathee, Advocate,
for the appellant.

Mr. Gagandeep Singh Wasu, Addl. A.G. Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 27.01.2012 and order of sentence dated 30.01.2012 passed by learned Sessions Judge, Faridabad whereby the appellant was convicted under Section 302 IPC and was sentenced as under:-

Under Section	Sentence	In default
U/S 302 IPC	Imprisonment for Life and to pay a fine of ₹10,000/-.	to further undergo RI for three months.

2. Relevant facts for the purpose of decision of this case; that on 16.04.2010, Smt. Vimlesh, complainant of this case, reported the matter to the police vide application, Ex. PA on the basis of which, FIR, Ex. PA/1 was recorded. On 16.4.2010, on receipt of information regarding murder of Suman, SI Parkash Chand along with other police officials reached the house of accused-appellant, Surender alias Sonu and found that one lady

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was murdered by slitting of her throat. As per the complainant, appellant, Surender alias Sonu, committed the murder of her daughter in conspiracy with his other family members, i.e., Smt. Sharda [mother-in-law], Rameshwar Dayal [father-in-law], Seema [sister-in-law] and Parmod [brother-in-law] of Suman. Appellant was having extra-marital relations with one girl, namely, Jyoti for the last several years. He used to stay at the house of said Jyoti and on objection having been raised by Suman, appellant used to give beatings to her daughter. At the time of death, Suman was having pregnancy of three months. Accused-appellant did not want child and used to pressurize Suman for abortion. All the accused used to raise demands of more dowry. Some time, the complainant gave cash, jewellery and Sarees etc; once the motor-cycle of appellant was stolen and at that time, he had demanded motorcycle and when this demand could not be fulfilled, he gave beatings to Suman. Seema [sister-in-law] used to come and reside for months together at her parental home and also used to harass Suman. Whenever Suman wanted to talk to her, she was not allowed to do so by her In-laws. As and when the complainant had gone to make appellant understand, he and his family members misbehaved with them and no body came to their rescue. Marriage of Suman was performed 2-1/2 years prior to the occurrence. She [complainant] is a widow and reached the place of occurrence along with her relatives on receipt of telephonic information.

3. On this, the police started the investigation. During investigation, blood stained bed-sheet and bloodstains from floor were taken. Rough Site plan of place of occurrence, Ex. PK was prepared. Inquest proceedings, [Ex. PL] were conducted. On 17.4.2010, the appellant was arrested. On

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18.4.2010, appellant suffered disclosure statement, Ex. PJ and in pursuance thereof, got recovered weapon of offence [paper-cutter] and bloodstained clothes. After completion of investigation, report under Section 173 Cr.P.C. was submitted.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused for commission of offence under Section 302 IPC or in the alternative for the offence punishable under Section 304-B IPC, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, learned trial Judge held the appellant, guilty and convicted him for commission of offence punishable under Section 302 IPC and sentenced him on 30.1.2012. Aggrieved of passing of judgment of conviction and order of sentence, appellant is before this Court by way of present appeal.

5. At the time of arguments, learned counsel for the appellant contended that the prosecution case has not been proved at all and learned trial Judge has completely ignored the most important facts of this case. The case of the prosecution is based on circumstantial evidence. At the time of death of Suman, appellant Surender alias Sonu was present at his work place as he had reported for his duty at 9.04 AM as deposed by DW-4 Shalender Sharma, Deputy General Manager of Industrial Relations, Mira Exim Limited, Noida. During lunch, the appellant had received information that some robbery had taken place at his house and he alongwith Naveen had gone to his house and found that robbery had taken place and his wife was lying dead. To this effect, all the four defence witnesses have been examined who have been disbelieved by learned trial Judge without any

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reason. DW-1, Neelam Mahore had deposed that at about 3.00 PM, she heard noise and went to the house of the accused and noticed that some robbery had taken place at his house and the wife of Surender alias Sonu had been murdered. Similar is the deposition of DW-2, Anil Kumar Moriya who is again a neighbourer. DW-4 Shalender Sharma also visited the place of occurrence at 3.30-4.00 PM and found that public and police was saying that some *loot* had taken place at the house of Sonu and his wife had been murdered. The Investigating Officer ignored these facts and had not investigated the matter properly.

6. Learned counsel for the appellant further submitted that Smt. Vimlesh, PW-8 [complainant of this case] had come with first version that the accused used to raise demand of motorcycle, but this fact was totally missing when she appeared in the witness box as PW-8. There is no support to this allegation on the basis of any record because no complaint was ever made to the police regarding harassment of Suman on account of demand of dowry.

7. Learned counsel for the appellant also urged that the complainant had come with the version that Surender alias Sonu was having extra-marital relations with one girl, named, Jyoti, but there is no material or evidence to support that allegation.

8. Learned counsel for the appellant further contended that at the time of alleged occurrence, the appellant was not present at his house, rather he was present at his work-place. He had left his house at about 8.00 AM and reached his office at 9.04 AM as deposed by DW-4 Shalender Sharma who proved attendance punching record [Ex. D1]. DW-1 Neelam Mahore, DW-2 Anil Kumar Moriya and DW-3 Nitin have also made

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similar deposition that the accused had left his house on 16.4.2010 at about 8.00 AM and at that time, Suman was alive. If that be the case, there was no question of the appellant being involved in the murder of Suman, rather the defence version is correct version that some robbery had taken place and the robbers had committed the murder of Suman.

9. While arguing on the point of alleged recovery from the possession of the appellant, contention was raised that there are material contradictions in the statements of prosecution witnesses. The bloodstains were found on the back of T-shirt and pant of the appellant and if the appellant had committed the murder of his wife, there was no question of bloodstains on the back of T-shirt and pant. Rather, the same should have been on the front side. The FSL report [Ex PG] suggests that no blood was found on the paper-cutter, which was allegedly used as weapon of offence. No blood group could be ascertained on the clothes allegedly recovered from the appellant and as such, report of FSL and recovery of alleged paper cutter and blood stained clothes, do not connect the appellant with the alleged offence. Even the disclosure statement, Ex. PJ, recorded on 18.4.2010 while the appellant was in police custody, is not having any legal value and the Court below has completely ignored all these facts and the impugned judgment of conviction and order of sentence deserve to be set-aside by this Court.

10. While arguing on these points, learned State Counsel contended that the prosecution has been able to prove the guilt of the accused beyond shadow of any doubt because the marriage of the appellant with Suman had taken place about 2-1/2 years back. There are clear cut allegations of demand of dowry and harassment to Suman on that count as per

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statement of PW-8, Smt. Vimlesh, complainant of this case. Prosecution evidence is available on the file by way of statement of PW-8 Smt. Vimlesh Gupta that Surrender alias Sonu was having extra-marital relations with one girl, Jyoti for the last several years and on objections having been raised by Suman, she was being tortured and given beatings.

11. Learned State counsel further contended that the alleged occurrence had taken place before 8.00 AM which is evident from the Post Mortem report [Ex.PF/1] which was conducted on 17.4.2010 at 11.30 AM. The probable duration between the death and the postmortem examination was opined to be “within 12 to 36 hours” and in that case, death had taken place at 8.00 AM on 16.4.2010 and at that time, admittedly, the appellant and Suman were present in the house. The death had taken place “as a result of asphyxia and haemorrhagic shock due to tracheal obstruction and injury to blood vessels which was ante-mortem in nature.” At that time, no other person, except for the accused-appellant was present in the house with Suman. The trial Judge has duly considered the prosecution evidence and defence version and has rightly discarded the defence version for the reasons given in the impugned judgment. The appeal is without merit and the same be dismissed.

12. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the view that most of the facts are not disputed. Suman was married to appellant, Surrender alias Sonu 2-1/2 years back. At the time of her death, she was having pregnancy of 3 months. On the night intervening 15th and 16th April, 2010, they were alone in the house. The Post Mortem examination was conducted on the dead body of Suman on 17.04.2010 at 11.30 AM and as

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per the postmortem report [Ex.PF/1], the probable duration between the death and the postmortem examination was opined to be “within 12 to 36 hours”. It is an admitted case of the appellant that he had left his house at 8.00 AM on 16.4.2010 and before that time, the appellant was present in the house as the post-mortem report suggests and establishes that the death had taken place in all probabilities before 8.00 AM and thereafter the appellant left the house. The prosecution has been able to lead evidence on the file by way of statement of PW-8, Smt. Vimlesh, complainant that the appellant-accused had a motive to commit murder of Suman. He used to raise demand of dowry at different times during short duration of married life i.e., for 2-1/2 years. Suman used to narrate her tale of woes to her mother whenever she used to visit her. Undisputedly, no complaint was made before the Police giving the exact date of demand of dowry, but reasons for doing so are obvious because of our social system and sensitive relations of married life being at stake. The prosecution has also been able to establish on file by way of statement of PW-8, Smt. Vimlesh that appellant, Surender alias Sonu was having extra marital relations with one girl, Jyoti. The plea taken by learned counsel for the appellant that identity of Jyoti has not been established is factually correct as the Investigating Officer of this case, SI Parkash Chand, PW-11 has deposed in his statement before the Court that Jyoti was joined during investigation, but she was found innocent. Meaning thereby that needle of suspicion was moving towards involvement of Jyoti also and she was very much in existence, but as nothing substantial could be taken by way of evidence against her, she could not be arrayed as an accused, but at any rate, there was one girl, Jyoti and the allegation has been established on file by way of

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PW-8, Smt. Vimlesh and PW-11, SI Parkash Chand that the appellant had extra marital relations with Jyoti.

13. Proceeding further from the point of allegation of murder against the appellant, motive and presence of appellant on the spot being established on the file, recovery of bloodstained paper-cutter and clothes of appellant also establishes the guilt of the accused-appellant beyond shadow of doubt. The FSL report, Ex. PG suggests that there were bloodstains on the T-shirt and pant of the appellant and on paper-cutter i.e. Weapon used for commission of offence. Further as per the serological analysis report [Ex. PG/1] of FSL, Madhuban the paper-cutter was having material disintegrated and human blood was found on bed-sheet, shirt, pant and cotton wool swab. The nature of injury suggests that injuries were caused with same weapon. The recoveries were effected on the basis of disclosure statement having been made by the appellant and the recovery was effected in the presence of accused and merely saying that there are some contradictions in the statements of the witnesses regarding recovery does not falsify the prosecution case. As such, the same has not rightly been believed by the trial Court.

14. The appellant has also raised false plea of dacoity/robbery which has rightly been negated by the Court below. First of all, the place of occurrence is a residential house surrounded by different houses. If the testimony of defence witnesses, namely DW-1 Neelam Mahore, DW-2 Anil Kumar Moriya and DW-3 Nitin are taken to be correct, they are residents of the same locality and the locality was so well knit that they could observe departure of the appellant from his house and also could observe the presence of Suman at her gate at that time, then they must have heard

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some cries of Suman if in fact, the alleged robbery had taken place. In the alternative they could have observed some persons making entry in the house of Surender alias Sonu or at the time of their departure from the place of occurrence. This version shows that the defence witnesses have been introduced just to support the appellant because of their neighbourhood and their friendly relations with appellant and at the same time, falsifies the theory of robbery having been introduced by the appellant. The theory of robbery, having taken place, stands falsified on other grounds as well. As per the accused-appellant, ear-rings of Suman were thrown in the canal after taking the same from the ears of Suman. If, in fact, it had been a case of robbery, the robbers must have taken all the valuable articles from the house of the appellant, but that is not proved on the file. In any way, there is absolutely no evidence available on the file showing forcible entry in the house of the appellant or breaking of any almirah etc. in the house so as to commit the robbery. All these factors establish that the defence version of robbery is just to cover-up the offence of planned murder having been committed by the appellant for a specific motive. The appellant put-up a defence of robbery, but failed to establish the same miserably because the circumstances available on the file prove the guilt of the accused beyond any doubt which includes motive on the part of the appellant to commit the offence, his presence on the place of occurrence, recovery of weapon of offence and other incriminating material, i.e., his bloodstained clothes recovered from the place of occurrence and presumption under Section 106 of Indian Evidence Act, against him as the death of Suman had taken place at her matrimonial home within seven years of her marriage. Such a view was taken by

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Hon`ble Apex Court in **State of Rajasthan Vs. Thakur Singh, 2014(4) R.C.R. (Criminal) 612**. Apart from that, there being positive evidence available on the file that the appellant used to harass and give beatings to Suman for demand of dowry and because of his extra marital relations with Jyoti.

15. As regard to the contention raised by learned counsel for the appellant that bloodstains being on back side of pant and T-shirt do not implicate the accused and the same is without any basis because in such like cases of scuffle, such bloodstains can come during different postures having been adopted by the assailant.

16. Learned trial Judge has already considered all these facts while recording the judgment of conviction and order of sentence. The same do not call for any interference by this Court. Resultantly, the present appeal is without any merit and the same stands dismissed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

June 2,2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes