

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

**Criminal Appeal No.D-757-DB of 2010
Decided on : January 24, 2017**

Sushila Devi

....Appellant

Versus

State of Punjab

....Respondent

Criminal Appeal No.D-863-DB of 2010

Mohinder and another

....Appellants

Versus

State of Punjab

....Respondent

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

Present : Mr. S.S. Rana, Advocate
for the appellants.

Ms. Manjari Nehru Kaul, Addl. A.G., Punjab.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two criminal appeals, one bearing Criminal Appeal No.D-757-DB of 2010 filed by Sushila Devi and Criminal Appeal No.D-863-DB of 2010 filed by Mohinder and Nand Kumar @ Nandu, all three of them having been

convicted by the Court of Additional Sessions Judge (Adhoc)-cum-Fast Track Court, Hoshiarpur vide judgment dated 07.06.2010 and sentenced as follows:-

Name of Convict	Offence under Section	Sentence Awarded
Sushila Devi	302 IPC	Rigorous imprisonment for life and to pay a fine of Rs.5000/, in default thereof, to further undergo rigorous imprisonment for six months.
Mohinder	302 IPC	Rigorous imprisonment for life and to pay a fine of Rs.5000/, in default thereof, to further undergo rigorous imprisonment for six months.
Nand Kumar @ Nandu	302 IPC	Rigorous imprisonment for life and to pay a fine of Rs.5000/, in default thereof, to further undergo rigorous imprisonment for six months.

These accused-convicts, pray that their appeal be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, facts of the case as per prosecution version are, that on 13.11.2007, complainant-Rajiv Kapila s/o late Shri Ramesh Kapila, aged 50 years, an agriculturist by avocation, r/o village Hariana, District Hoshiarpur and Councillor of ward No.5, Hariana got his statement recorded with Sukhjinder Singh, SI/SHO, Police Station Hariana, who along with a police party had come across complainant-Rajiv Kapila at Electricity Office, Hariana while such complainant along with Chander Parkash and Deepak Prabhakar was going to the Police Station to lodge a report regarding murder of his servant-Pardesi Bhaiya. In the said statement Ex.PD, Rajiv Kapila

stated that he owns agricultural land near Bandh measuring about 4 killas in the area of village Dadiana Kalan and his Haveli is situated near DAV School, Sham Chaurasi Road, Haryana, where he has kept nine bhaiyas (natives of UP, Bihar) to look after his property. Pardesi was one of such persons. That, Pardesi was residing in the Haveli along with his family and he used to bring fodder for the cattle from agricultural land of the complainant at village Dadiana Kalan. On the said day, when Pardesi did not bring fodder for the cattle till 10.00 P.M., then he went in search of him to the Haveli, but he did not come across him. Then he proceeded towards fields near village Dadiana Kalan, where he found chopped fodder lying near the motor in the fields, the dead body of Pardesi was also lying in the fields with a sickle in his right hand. There was ligature mark around his neck and it appeared that somebody had murdered him by strangulation with the help of string or such like object.

After recording statement Ex.PD of complainant-Rajiv Kapila at Electricity Office, Haryana. S.I. Sukhjinder Singh, SHO (hereinafter referred to as Investigating Officer/I.O.) put his endorsement Ex.PD/1 below the statement and sent *Ruqa* to Police Station through constable Bahadur Singh, on the basis of which formal FIR Ex.PD/2 was recorded at Police Station, Haryana under the signatures of ASI Yogesh Kumar.

Then the police party accompanied by the complainant came to the place of occurrence, where the Investigating Officer prepared rough site plan of the place of incident as Ex.PW10/A with

correct marginal notes. He carried out inquest proceedings with regard to the unnatural death of Pardesi and prepared a report in that regard as Ex.PW10/B. He summoned a finger print expert and a photographer to the spot. The finger print expert lifted finger prints from bottle of liquor, mark 'land lord Rum'. The Investigating Officer subscribed an application Ex.PA and sent the dead body of Pardesi for purpose of getting postmortem examination conducted thereon. He took into possession one empty liquor bottle mark 'land lord Rum', one steel *colli* (bowl), after preparing parcel and vide memo Ex.PG attested by witnesses. One wallet containing some papers and Rs.255/- was also taken into possession vide memo Ex.PH. One pair of *chappal* and a sickle were seized vide memo Ex.PJ. After postmortem examination, the dead body was handed over to Rajiv Kapila and Suresh Kumar against receipt Ex.PW 10/C. Clothes of the deceased, which had been produced before the Investigating Officer by HC Sukhdev Singh, after postmortem examination were taken into possession and converted into a parcel and then taken into possession vide memo Ex.PG. On 15.11.2007, accused-Sushila Devi, Nand Kumar @ Nandu and Mohinder, were arrested in this case. Their arrest-cum-intimation memos Ex.PK, Ex.PL and Ex.PM, respectively, were prepared. Their personal searches were conducted and memos in that respect Ex.PN, Ex.PO and Ex.PP were prepared.

Accused Sushila Devi, during the course of interrogation on 17.11.2007 suffered a disclosure statement that she had kept concealed one *parna* (piece of cloth) of blue colour underneath the

branches (chhaapas) which could be got recovered by her from Rakkar (abandoned place) near the tubewell room. The I.O. reduced into writing the disclosure statement Ex.PW 10/D which was thumb marked by accused-Sushila Devi and attested by lady constable Rupinder Kaur and PRHC Sukwinder Singh. Thereafter, accused Sushila Devi, while in police custody got the *parna* recovered from the place specified in her statement, which was converted into a parcel sealed with seal of the I.O. and then was seized vide memo Ex.PW 10/E. The Investigating Officer prepared rough site plan of the place of recovery. He recorded statements of witnesses. During the course of investigation, the I.O., got site plan of place of incident prepared as Ex.PW10/G and received report Ex.PF from Inspector Gurdip Singh, Finger Print Expert. He also received report Ex.PQ from the office of Director, Finger Print Bureau, Phillaur. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, Hoshiarpur.

On presentation of challan in the Court of Illaqa Magistrate, copies of documents relied upon 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 is exclusively triable by Court of Sessions, learned Illaqa Magistrate committed the case to the Court of learned Sessions Judge, Hoshiarpur, from where it was entrusted to the Additional Sessions Judge-cum-Fast Track Court, Hoshiarpur.

After making consideration, charge for offence under

Section 302 of the Indian Penal Code was framed against all the three accused, to which they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of evidence of prosecution, prosecution examined as much as 11 witnesses as per details below:-

- PW1 - Dr. Gurmit Singh, Medical Officer, Civil Hospital, Hoshiarpur.
- PW2 - HC Sukhdev Singh
- PW-3 - Rajiv Kapila
- PW-3 - Inspector Gurdip Singh
(Again numbered as PW-3)
- PW4 - HC Mohinderjit Singh
- PW5 - ASI Bikramjit Singh
- PW6 - Constable Sukhdev Singh
- PW7 - ASI Govinder Kumar
- PW8 - Constable Hari Kishan
- PW9 - Deepak Kumar Pharwakar
- PW10 - SI Sukhjinder Singh

PW-1 Dr. Gurmit Singh, Medical Officer, Civil Hospital, Hoshiarpur, who on 14.11.2007, alongwith Dr. O.P. Gojra constituting a Board of Doctors, had conducted postmortem examination on the dead body of Pardesi, deposed that death as per police information had taken place on 13.11.2007 at 11.55 P.M.; postmortem examination had been conducted on 14.11.2007 at 12:45 P.M. That as per information of police, Pardesi had allegedly died due to strangulation of neck. He had stated that rigor mortis was

present in all of four limbs; there was bleeding from the nose and mouth.

- (1) There was a brownish black ligature mark 0.8 cm wide on the front, sides & back of the neck. On front, it was above the thyroid cartilage and on the back, it was just below the hair line; that on the right antero lateral side of the neck, the ligature mark was slightly going downwards from the thyroid cartilage upto anterior border of sterno cleido mastoid muscle and was irregular over there and then going upwards and backwards. On dissection, it was glistening white and underlying muscles and tissues were ecchymosed.
- (2) Multiple brownish black, abrasions were present on the front and sides of neck varying from 0.5cm x 1cm.
- (3) There was swelling of 4cm x 3.5cm present on the left infra orbital region, brownish black in colour. Sub-conjunctival heamorrhage was present.

Rest of the organs were healthy, except the scrotum which was having hydrocele.

He stated that the cause of death in this case was asphyxia due to strangulation of neck, which was sufficient to cause death in the ordinary course of nature.

He proved copy of the postmortem report as Ex.PA. and diagram showing seats of injuries as Ex.PA/1.

PW-2 HC Sukhdev Singh, who on 14.11.2007, while

posted at Police Station, Haryana, was a member of the police party headed by SI/SHO Sukhjinder Singh deposed that after carrying out inquest proceedings, the Investigating Officer had handed over the dead body of deceased to him and SPO Surjit Singh along with application Ex.PB and they had got the postmortem examination conducted on the dead body and thereafter produced the clothes of deceased before I.O. which had been seized by him vide memo Ex.PC.

PW-3 Rajiv Kapila, complainant deposed, as per prosecution story, as regards Pardesi going missing and his dead body having been found in the fields on 13.11.2007 at night and then his making statement to the police Ex.PD. He stated that he had got recorded in his statement that Pardesi was related to Nandu as narrated by him and Pardesi had been telling him that he was to take Rs.5000/- from Nandu and that Mohinder-accused sometimes had been residing in Haveli situated in his land. However, he denied that Mohinder had been visiting the Haveli in the absence of Pardesi. He stated that he did not have any suspicion that wife of Pardesi was having illicit relations with Mohinder. At the request of Public Prosecutor that witness was suppressing the truth, he was declared a hostile witness and Public Prosecutor was allowed to put questions to him in the form of cross-examination, wherein he denied having stated in his statement Ex.PE that Mohinder was seen by him in Haveli in the absence of Pardesi and that he was doubting that he was having illicit relations with Sushila Devi w/o Pardesi and he had pulled up Pardesi. He further denied having stated to the police that he had told Mohinder not

to visit the Haveli or that about five days earlier Mohinder and Pardesi had exchanged abuses at his *dera* when Nandu came to the rescue of Mohinder.

PW-3 Inspector Gurdeep Singh, Finger Print Expert, Hoshiarpur stated that on 14.11.2007, on receipt of a telephonic message from Police Control Room, Hoshiarpur, he had reached the place of occurrence, that is, chari fields of Rajiv Kapila in area of village Dadiana Kalan and had inspected scene of crime along with I.O. of the case namely S.I. Sukhjinder Singh, Police Station, Haryana and that he was shown all the articles suspected to be handled by the culprits; he examined the same and found some finger prints on bottle of wine mark 'land lord Rum' 375 ml and a steel *colli* (bowl) lying in the tubewell room and that he had developed the impression with the help of suitable powder and encircled the same with initials advising the I.O. to make the parcel of said articles and send the same to Director, Finger Print Bureau, Phillaur through special messenger. He said that articles along with his report Ex.PF were handed over to I.O. for further action.

PW-4 HC Mohinderjit Singh, stated that he is serving as Finger Print Technician, by designation Head Proficient and on 20.11.2007 at the instance of ASI Bikramjit Singh of Police Station Haryana, he went to the Court of Shri H.S. Lekhi, JMIC, Hoshiarpur and took specimen finger print impressions of accused Mohinder Singh, Nand Kumar @ Nandu and Sushila Devi. Those sheets were signed by him and attested by Shri H.S. Lekhi, JMIC, Hoshiarpur,

which were handed over to ASI Bikramjit Singh for further necessary action.

PW-5 ASI Bikramjit Singh, who on 14.11.2007, was member of the police party headed by SI Sukhwinder Singh deposed regarding what had taken place in his presence on that day. He further deposed that on 15.11.2007 accused Sushila Devi, Nand Kumar and Mohinder Singh were arrested by the I.O. and their specimen finger prints were taken. He proved various documents and recovered articles.

PW-6 Constable Sukhdev Singh, a formal witness who on 15.11.2007 had taken one sealed parcel from MHC Govinder Kumar for taking the same to the office of Finger Print Bureau, Phillaur stated that he had done the needful and no tampering with the parcel had taken place when said parcels remained in his custody.

PW-7 ASI Govinder Kumar, who on 14.11.2007, was posted as MHC, Police Station, Haryana and with whom S.I. Sukhjinder Singh had deposited the case property out of which he had been sending specific parcels to various quarters in connection with the investigation of the case, deposed that no tampering of seal had taken place during the period such parcels/articles remained in his presence.

PW-8 Constable Hari Kishan, Photographer, Police Line, Hoshiarpur stated that on 14.11.2007 while he was posted at Police Line, Hoshiarpur as an official photographer, on that day at the instance of S.I. Sukhjinder Singh, Police Station Haryana, he had gone to the place of occurrence in area of village Dadiana Kalan i.e. to the

fields of Rajiv Kapila, wherein dead body was lying and clicked the photographs from different angles. He further deposed that after developing the negatives and printing the photographs, he handed over six photographs and negatives to SI Sukhjinder Singh. He proved photographs as Ex.PW8/A to PW8/F and negatives PW8/G to PW8/L.

PW-9 is Deepak Kumar Pharwakar. Since his testimony is quite relevant the same is being reproduced for ready reference:-

“I am a Commission agent and have family relations with Rajiv Kapila son of Ramesh Kapila resident of Haryana. On 13.11.2007 at about 2:30 P.M. I went to the house of Rajiv Kapila as I had some urgent work with him. Rajiv Kapila did not meet me at his house and I came to know that he had gone to his (Bambi) tubewell house. Then I went to the haveli of Rajiv Kapila which was situated on Shamchaurasi road but none met me there. Thereafter, I went to the Bambi (tubewell house) of Rajiv Kapila which was situated near the Dhussi bandh of V. Dadiana Kalan but Rajiv Kapila did not meet me there. Nand Kumar alias Nandu and Mohinder met him there who were taking liquor in Bambi room. I asked both of them that where is Rajiv Kapila and they replied that he had not come there. Sushila Devi wife of Pardesi who was also servant of Rajiv Kapila also came there with a water in a jug. Thereafter, I came back. At about 11.00 P.M. I received a telephonic call from Rajiv Kapila that his servant Pardesi

had been murdered by strangulation with some string. I had a firm belief that Nand Kumar alias Nandu, Mohinder and Sushila after hatching a conspiracy had committed murder of Pardesi.”

PW-10 SI Sukhjinder Singh, I.O., of this case deposed regarding the investigation conducted by him proving various documents.

Learned Additional Public Prosecutor produced report of Finger Print Bureau dated 25.02.2008 as Ex.PX and with that prosecution evidence was closed.

The statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence appearing against the accused was put to them, but they denied the allegations contending that they were innocent and had been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, trial Court convicted and sentenced the accused, as mentioned above, which left them aggrieved and they have filed the present appeals.

We have heard learned counsel for the parties besides going through the record and we find that the impugned judgment is not sustainable, since it suffers from various infirmities and illegalities.

It is a case of circumstantial evidence and no direct evidence of the incident is available. Law is well settled that in such an eventuality the chain of events must be complete and if some vital link is missing, then conviction of accused cannot be sustained.

Furthermore, motive plays a significant role in such type of cases. In the instant case, various vital links in the chain are missing. Coming to the evidence adduced by the prosecution, PW-1 Dr. Gurmit Singh, Medical Officer was member of the Board of Doctors, which had conducted postmortem examination of the dead body of deceased-Pardesi. From his statement, it can be taken that Pardesi had died an unnatural death by way of strangulation but the crucial thing to be seen is as to who had caused such death of Pardesi. The clear evidence in that regard, showing involvement of accused in the incident is not there.

Coming to the testimony to PW-2 HC Sukhdev Singh, he had just got postmortem examination conducted on the dead body of Pardesi on instructions of the I.O. His testimony is more or less of formal in nature.

Coming to the statement of PW-3 Rajiv Kapila-complainant, he deposed regarding deceased Pardesi being in his employment and along with his family residing in the Haveli where other servants were also residing. He deposed that since on 13.11.2007 Pardesi had not returned along with fodder for the cattle till evening hours as he used to do in routine, he went in search of him but he was not in the Haveli and thereafter he went to his fields, where dead body of Pardesi was lying there having ligature marks around his neck and then he had reported the matter to the police. He refused to toe the line of prosecution that he had made any supplementary statement to the police in which he had disclosed that Sushila Devi w/o

Pardesi was having illicit relations with Mohinder or that he had asked Mohinder not to visit his Haveli. He denied any knowledge regarding any abuses having being exchanged between Mohinder and Pardesi about five days prior to the incident. Therefore, motive, which the prosecution wanted to establish by way of examining this witness, does not get proved. Though, he had stated that Pardesi had been telling him that he was to take Rs.5000/- from Nandu, but then he did not say that there was any hostility between deceased on one side and Nandu or Mohinder on other. The statement of this witness does not help the prosecution in advancing its case.

Coming to the testimony of PW-3 Inspector Gurdip Singh, Finger Print Expert, Hoshiarpur, who had lifted the finger prints from the bottle of liquor which on comparison were found to tally with finger prints of Nand Kumar @ Nandu. It is not such an incriminating evidence which would point out towards involvement of the accused in the incident. Coming to testimony of PW-9 Deepak Kumar even if we take his testimony as such, then at best it goes to show that on 13.11.2007, the fateful day at about 02:30 P.M., he had seen accused Mohinder, Nand Kumar @ Nandu taking liquor in the tubewell room of complainant whereas accused Sushila Devi was found to be serving water to them having a jug of water with her. It is not the case of the prosecution that the deceased was also sitting there taking liquor with accused Mohinder and Nand Kumar @ Nandu. Had it been so, then it could be taken that some dispute might have taken place between them, as a result of which accused committed murder of Pardesi. But

then Pardesi was found dead at about 11:00 P.M. in the fields, the liquor bottle having finger prints of Mohinder does not have much significance.

The testimony of PW-9 Deepak Kumar does not go to point out illicit relations between Sushila Devi and Mohinder Kumar. Things might have been different if he had observed Mohinder Kumar and Sushila Devi in some compromising position or Sushila Devi taking liquor with Mohinder Kumar and Nand Kumar @ Nandu. But just for the reason that she was standing nearby having jug of water, does not go to establish any illicit relations between Mohinder Kumar and Sushila Devi, more particularly, when this fact has been strongly denied by PW-3 Shri Rajiv Kapila, complainant.

Statement of PW-4 HC Mohinderjit Singh is not directly incriminating against the accused nor the testimony of PW-5 ASI Bikramjit Singh, who had participated in the investigation of the case.

PW-6 Constable Sukhdev Singh, PW-7 ASI Govinder Kumar just happened to be the formal witnesses. As regards testimony of PW-8 Constable Hari Kishan, Photographer, his testimony is of corroborative nature only.

PW-10 SI Sukhjinder Singh had just carried out investigation in this case. He does not claim to have any personal knowledge regarding the incident.

As regards, Sushila Devi suffering a disclosure statement and getting *parna* recovered from her possession, the same does not strengthen the prosecution case. Admittedly, the *parna* was not sent to

Forensic Science Laboratory and no report is available that it contained any blood stain or spit stain of the deceased.

PW-10 SI Sukhjinder Singh admitted in his cross examination that such like *parnas* are easily available in the open market and there was no special mark of identification. He stated that there is no special mark connecting the accused with *parna*. Therefore, it cannot be said that this *parna* which was got recovered by Sushila Devi, was used for strangulation of the deceased.

From the prosecution story, it comes out that the strangulation was done with some string or rope. However, no such rope was recovered from the spot as stated by PW-10 SI Sukhjinder Singh. The prosecution has failed to connect the accused with the incident. No strong motive for the incident could be established. It could not be established satisfactorily that *parna* was used for strangulation of the deceased by the accused. All these factors lead to the conclusion that vital links are missing in the prosecution case based on circumstantial evidence. The prosecution has failed in its endeavour to prove charge against the accused beyond a shadow of reasonable doubt. The trial Court by misappraisal of evidence and wrong interpretation of law came to an erroneous conclusion that charge for offence under Section 302 IPC stood established against all the three accused beyond the shadow of reasonable doubt, whereas it was not so.

The judgment of conviction and sentence passed by the trial Court has no legs to stand. Rather it is liable to be set aside by

way of acceptance of appeals. Doing so, the appeals are allowed. The conviction and sentence of all the three accused is set aside and they are acquitted of the charge framed against them. They be set at liberty, if not required any in other case.

(T.P.S. MANN)
JUDGE

(H.S. MADAAN)
JUDGE

January 24, 2017

rajneesh

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No