

CRA No.D-874-DB of 2012

DATE OF DECISION: AUGUST 25, 2017

DEEPAK MANN

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN.
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.**

PRESENT: MR. GURVINDER SINGH SANDHU, ADVOCATE
FOR THE APPELLANT.

MR. PRAVEEN BHADU, A.A.G., HARYANA.

MAHABIR SINGH SINDHU, J.

1. The sole convict has filed the present appeal against the judgment of conviction dated 28.8.2012 and order of sentence dated 29.08.2012, passed by Additional Sessions Judge, Sonapat vide which he was convicted under Sections 302 of Indian Penal Code (hereinafter referred to as 'IPC') and was sentenced to undergo rigorous imprisonment for life and to pay fine of ₹10,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of three months and under Section 201 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹5,000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of two months, for the murder of his wife Pooja @ Gurjeet Kaur.

2. The brief facts of the case are that an FIR No.166 dated 29.05.2010, under Sections 302, 201 and 404 of IPC was registered at Police Station, Kundli District Sonapat on the basis of statement dated 29.05.2010 (Ex.PG) made by one Jagbir (PW-11) and the English version of

the same is as under:

“Stated that I am resident of Safiabab, Police Station Kundli and an agriculturist. I have taken 3 acres of agricultural land from Rakesh son of Shyam Lal Verma of Narela on lease near the village. Today, in the morning at about 09:30 AM, I was going to look after my millet crops towards the end, then on the open passage in the corner of the field, I saw the dead body of an unknown woman lying beside the wall. When I went near it, I saw soil and brick on her mouth and scarf (chunni) was tied on her neck whose age appeared to be 26-27 years who is wearing ferozi coloured embroidered salwar-jumphaar. On seeing the dead body, it seems that she has been murdered at some other place and the unknown criminals have thrown the dead body here just to conceal the same. After leaving chowkidar Lakhmi son of Puran, Lohar of the village with the dead body, I have come to you, now you have met, I have got recorded my statement which is correct.”

4. After registration of the FIR, inquest proceedings (Ex.PF/2) were carried out by ASI Ramesh Chander, PW8 on 29.5.2010 regarding death of unknown woman and sent the dead body for post mortem examination vide application Ex.PF/3. Clothes, chunni, ornaments, bone and swab were taken into possession vide memo Ex.PA. It is necessary to mention here that on 30.05.2010 present appellant got recorded a DDR No.14-A dated 30.05.2010 at 2.00 p.m. (Ex.P4) at Police Station KNK

Marg, Sector 16, Rohini and which reads as under:

“It is recorded at 2:00 P.M. in the day that person mentioned in Column No.2 came present in the DO room and got recorded that I am residing at the above address with my family and running a water plant in village Badli. On 28.05.2010 my wife Pooja @ Gurjeet Kaur had gone to the market in Sector-17, Rohini for shopping at about 10:00 PM and she was carrying Rs.10,000/- and mobile No. 9818859707 and my son aged 19 days was also with her and she has not returned to home so far. Earlier on 2-3 occasions also, my wife had gone out from the house and she used to return in one or two days. She is mentally weak. Search may kindly be carried out for my wife and my son Krishan. I have no doubt on anyone. Identification of my wife is as under:-Age 24 years, wheatish colour, round face, medium body, height 5'1”, clothes, green colour suit, wearing slipper of cream colour, small hair of brown colour, eyes black and description of my son is colour fair, body thin, face round, height 1'4” wearing white T-shirt and wrapped in yellow coloured towel. Be searched. Missing report of woman and child is recorded in Daily Diary and copy of the report is handed over to HC Ramesh Chand No.320/D and its information was given on 100 number

which was given on channel no.101 by L/Ct. Nirmala, 8204/toHC/DO.”

5. The appellant was arrested by PW13 Inspector Lakwinder Singh on 27.06.2010 at 6:30 P.M and prior to that, it seems that convict-appellant was not associated by the investigating agency. After arresting the appellant, the police carried on the investigation and recorded disclosure statement of the appellant (Ex.PJ) on 27.06.2010.

6. After completion of investigation, report under Section 173 Cr.P.C. was presented in the Court and the case was committed to the Court of Sessions. Charges for the offence under Sections 302, 201 and 303 IPC were framed against the accused to which he pleaded not guilty and claimed trial.

7. The prosecution examined as many as 13 witnesses and brought on record documentary evidence to prove its case.

8. In his statement under Section 313 Cr.P.C. the appellant stated that deceased Pooja was earlier married to one Dinesh Chhokar who was a dreaded gangster. The rivals of Dinesh Chhokar wanted to kill Pooja in order to take revenge of numerous killings of their gangmates by Dinesh Chhokar and she had been liquidated by rivals of Dinesh Chhokar. He further stated that deceased Pooja and her parents were not on speaking terms with each other and her parents wanted to usurp the flat, car, motorcycle and other belongings owned by him and Pooja jointly. He pleaded innocence and false implication. The accused-appellant also examined DW1 to DW5 in support of his defence.

9. The trial Court after giving due consideration to the facts and circumstances of the case, convicted and sentenced the appellant.

10. Hence the present appeal.

11. Learned counsel for the appellant vehemently contended that the present case rests only on circumstantial evidence and there was nothing on record to prove that it was the accused-appellant who committed the murder of the deceased, rather it was a blind murder. There was no eye witness to the occurrence and no evidence was available with the prosecution to prove its case beyond reasonable doubt. Neither any FSL report, nor photographs of the spot were produced to prove the case by the prosecution from testimony of PW2 Constable Naresh Kumar itself and therefore, the prosecution has miserably failed to prove that the dead body recovered in this case was of Pooja @ Gurjit Kaur.

12. On the other hand, learned counsel for the State stated that each and every aspect had been taken care by the learned trial Court while convicting and sentencing the accused-appellant and the prosecution has been able to prove its case against the appellant beyond reasonable doubt.

13. PW-7 Gurdeep Singh, who is the father of deceased has specifically deposed that on 28.05.2010, accused-Deepak Maan had accompanied his daughter Pooja @ Gurpreet and minor son Krishna aged 17 days only, in an Alto car bearing registration No.DL-9CQS-1673 (black colour).

14. PW-12, Smt. Sudesh Rani, who is the mother of the deceased has also deposed in the same terms and there is neither any contradiction

nor any suggestion to the contrary made to PW7 and PW12 during their deposition that the accused-appellant, deceased Pooja and their son were not in the company of PW7 and PW12 on 28.5.2010 and left in Alto car bearing registration No.DL-9CQS-1673. Alto car referred above along with its Registration Certificate (RC) was recovered in pursuance of the disclosure statement of the appellant by Inspector Lakhwinder Singh PW-13 and the recovery memo is Ex.PD. It is necessary to mention here that the Alto car was found parked in front of the flat where the appellant and deceased Pooja used to reside. Therefore, one thing is clearly proved that on 28.05.2010, appellant was last seen with the deceased and his minor son.

15. Even in DDR No.14-A (Ex.P-4) also, the appellant has disclosed that on 28.05.2010, his wife Pooja @ Gurjeet Kaur had gone to the market in Sector-7, Rohini for shopping at about 10:00 P.M and she was carrying an amount of ₹10,000/- along with mobile No.9818859707 and their 17 days' old minor son was also with her. He has also given the description of his wife as aged 24 years, wheatish colour, round face, height 5'1", wearing green colour suit and slipper of cream colour, small hair of brown colour, eyes black and about the son as colour fair, body thin, face round, height 1'4" wearing white T-shirt and wrapped in yellow coloured towel. Meaning thereby, he is not disputing that on 28.05.2010 his wife and minor son were alongwith him. There is nothing on record that appellant had taken any action regarding the incident of disappearance of his wife and minor son 17 days old on 28.5.2010, except

lodging the DDR only on 30.05.2010 and nothing else which gives a clear indication that appellant wanted to get rid off his wife and he had no mercy even for his 17 days' old child.

16. The medical evidence in the form of post mortem report (Ex.PF/1), conducted by a Board situated at General Hospital, Sonapat on 29.05.2010 at 10:30 A.M. consisting of Dr.Sonam Mittal (PW-6) and Dr.Neeraj Gupta revealed the following injuries on the dead body of Gurjeet Kaur @ Pooja(deceased):-

“1. Ligature mark is found in form of groove all around the neck, 2 cm wide, thick parchment like, on cut-section white glistening base with margins congested. Muscles and vessels of the neck lacerated. Ligature material (Chunni) all around the neck, cut from side and kept and preserved in sealed packet with site of knot identified by white thread and handed over to police.

2. Bleeding present from both nostrils with 3 multiple & 3 lacerated wounds of 0.75 x 0.5 cm and 0.5 x 0.5 and 1 x 0.5 cm on bridge of nose with depression and crepitus on bridge of nose.

3. Lacerated wound on middle of forehead of 1 x 0.5 cm.

4. Fingers are clenched.

5. Lacerated wound of 2 x 1 cm on upper lip in midline with underlying upper incisors loose and broken.

6. Tongue is bitten between teeth.

On local examination of external genitalia, no external marks of injury present. On cervix & vagina healthy. 2 vaginal swabs taken & sent for sperm examination. On P/V, uterus MPS size. On cut section uterus empty.

The Doctor opined that the cause of death of the deceased was asphyxia as a result of strangulation which was ante mortem in nature and sufficient to cause death in normal course of life. Probable time between injury and death was within few minutes and between death and post mortem examination were 6 to 36 hours. Copy of MLR is Ex.PF. There was no cross-examination or suggestion that dead body was not of Pooja and thus, it will be too late to dispute the same.

17. The medical evidence in the form of post mortem examination clearly corroborates with the disclosure statement (Ex.PJ) of the convict-appellant that he caught the deceased from her neck with both his hands and as soon as she fell unconscious, he strangled her with a chunni, drove the dead body of Pooja towards Narela-Safiabad road and caused injuries on her forehead, nose and lips with the brick to conceal her identity.

18. The sequence of events explained by the convict-appellant in his disclosure statement correlates with the version given by PW-12 that on 28.5.2010 at about 7.00 p.m., he alongwith the deceased and their minor son visited the house of PW12 Sudesh Rani to drop her in Alto Car. The convict-appellant has further stated that on returning back to their home, while he was sitting on the rear seat and the deceased was on the wheel, near the Blind Welfare Society, Mongolpuri, the deceased started quarreling with

him and raised some allegations of illicit relation against him and then, he held the deceased's neck with both her hands and on her becoming unconscious, he strangled her with a chunni. Thereafter, he took the driving seat and drove the car towards the river on Haiderpur to Bawana road. On reaching near DSIDC bridge, he laid the child on the berm of river and drove the dead body of Pooja towards Narela-Safiabad road. Thereafter, on reaching Safiabad, he pulled the deceased after opening the window and laid it beside the wall with her face upside. He further disclosed that he removed her tops from ears and mangalsutra and caused injuries on her forehead, nose and lips with the brick to conceal her identity. After throwing soil on her face, the convict-appellant went to Metro Station, Rithala, Delhi. He also destroyed the mobile phone No.98188 59707 and chip of the deceased and called PW7 Gurdeep Singh on his mobile phone 93500 82913 that Pooja had gone missing.

19. PW9 SI Sohan Lal deposed that on 29.5.2010 he was posted at P.S. Kundli. He recorded formal FIR Ex.PG/2. He further deposed that he visited various Police Stations at Delhi with the clothes of the deceased to reveal the identity of the deceased. On 26.6.2010, PW7 Gurdeep Singh and PW12 Sudesh Rani were summoned and they identified the same as of the deceased. On 27.6.2010, in his presence, the convict-appellant was interrogated by Inspector Lakhvinder Singh, the then SHO and during the investigation, the convict-appellant made disclosure statement Ex.PJ and unfolded the whole incident.

20. PW13 Inspector Lakhvinder Singh deposed that he took the

charge of investigation on 26.6.2010 and on 27.6.2010, he arrested the convict-appellant and made interrogation. During interrogation, he suffered disclosure statement Ex.PJ and confessed to have committed the murder of Pooja leaving his son on the bridge of Bawan canal on 28.5.2010. The convict-appellant got demarcated the place of occurrence, the place where he left his son, a brick in order to disfigure the face of Pooja to dispute her identity, got recovered Alto Car , one Mangalsutra and a pair of tops. He also got demarcated the place where he first strangled Pooja.

21. PW7 Constable Naresh Kumar who took photographs of the place of occurrence deposed that he could not get the photographs prepared as the images in the camera got corrupted and the camera hung up.

22. The convict-appellant got recorded his statement regarding missing of Pooja @ Gurjeet Kaur only on 30.5.2010 at Police Station KNK Marg, Sector 16, Rohini and recorded the fact that on earlier 2-3 times also Pooja @ Gurjeet Kaur had gone from the house and used to return in one or two days. The convict-appellant failed to show any document to prove that on earlier occasions deceased Pooja left the house or he informed the police or any other Government agency in this regard. The description by the convict-appellant in his DDR (Ex.P4) with regard to the clothes and other items worn by the deceased matched with the clothes recovered vide Ex.PA from the dead body found at the place of occurrence at the time of inquest proceedings.

23. The appellant has also failed to show any document or led any evidence that any effort was made by him to locate his wife and son. It was

his case that deceased Pooja alongwith her son left home on 28.5.2010 at 10.00 p.m. and he lodged a complaint in this regard only on 30.5.2010 at 2.00 p.m.. The appellant had done nothing in order to trace his wife and the infant son. A person with a prudent mind will always rush to search his wife and infant son without any loss of time, until and unless there is some guilt in his mind. But nothing has come on record that the appellant had ever made any efforts to find out his wife Pooja and their infant son.

24. Very surprisingly, even the prosecution has chosen to kept mum so far as the search of infant is concerned. Nothing has come on record if any effort was made by the Investigating Agency regarding the fate of the unfortunate 17 days' old child. In fact, no effort at all has been made by the Investigating Agency to locate the whereabouts of the infant. There is a serious lapse on the part the investigating agency who failed even to utter a single word with regard to the fate of the unfortunate child. Although as per testimony of PW2, his camera got corrupted and hung up, but has deposed that he had taken photographs of the spot and as such the same will not help the defence in any manner, in view of statement under Section 313 Cr.P.C. that Pooja was liquidated by rivals of Dinesh Chhokar.

25. Therefore, we are of the considered view that the prosecution has been able to prove its case as it was the convict-appellant only who was last seen in the company of the deceased, testified by PW7 and PW12, who committed the crime and the appellant has also not disputed his presence with the deceased on the fateful day as is clear from DDR No.14 dated 30.5.2010 (Ex.P4).

26. Therefore, while confirming the judgement of conviction and sentence passed by the learned trial Court, the appeal stands dismissed.

27. Before parting with the judgement, it is quite disturbing to note that in the present case neither the FSL report; nor the photographs have been produced by the prosecution for the reasons best known to them. It seems that even no efforts were made to trace out the infant by the investigating agency. A very insensitive approach has been shown by the investigating agency with regard to tracing/recovery of the unfortunate child. The investigating agency chose to remain idle on this aspect of investigation from the date of investigation till the disposal of the trial. Thus, it is manifestly clear that the investigation was quite shoddy and not upto mark which, at all, is not expected from the State Police. As the learned trial Court passed the judgement on 28.8.2012, there was every possibility to recover the corrupted photos with the aid of technology in these days. The failure of the prosecution while not sending the necessary articles to FSL for examination as well as non-retrieving of corrupted photos of the place of occurrence goes to the root of the case and shows the lapses committed on the part of the prosecution as the same form necessary and very important part of evidence to prove the guilt. If this would be the attitude of the investigating agencies to investigate such type of crimes, then there would be every possibility for the accused going scot-free.

28. Accordingly, we direct the learned State counsel to bring the observations made by this Court to the notice of the Chief Secretary, Haryana with regard to the serious lapses committed by the Investigating

Agency and take appropriate action against the erring official(s)/officer(s) in this case in order to maintain sense of responsibility and dignity of the investigating agency towards the public at large and take the matter to its logical end and submit a report to this Court on or before 30.4.2018.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

August 25, 2017
Gulati

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes

