

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

**CRA-D-479-DB of 2003
Date of decision :-20.3.2017**

Santosh Kumar

....Appellant

Versus

State of Haryana

....Respondent

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

Present : Mr. Rajiv Vij, Advocate as
Legal aid counsel for the appellant.

Mr. Praveen Bhadu, Assistant A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 27.3.2003 passed by the Court of learned Additional Sessions Judge, Panchkula, vide which he had convicted accused Santosh Kumar for an offence under Section 302 of the Indian Penal Code and order dated 29.3.2003 vide which accused was sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for one year, for the said offence.

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

Briefly stated, the case of the prosecution is that on

13.5.2001, complainant Krishan Pal Jain son of Shri Chand Jain, aged 42 years, resident of House No.448 Rajiv Colony, Panchkula running a shop at Rajiv Colony besides, being President of Labour Association of the said colony was present at his shop. At about 6:00 p.m., Pawan Kumar son of Prem Chand, resident of Rajiv Colony came there and informed that in *jhuggi* No.523 which was near the Shiv Temple in that area, a woman namely Preeti wife of Santosh Kumar @ Pappu, resident of U.P. was lying dead on the bench; that the deceased who was living with her husband and four years' old daughter Chandni had taken *jhuggi* No.523 on rent. On getting that information, complainant Krishan Pal Jain along with Pawan Kumar reached at *jhuggi* No.523 and observed that Preeti was lying dead on the bench; that her blue *saree* had been tied around her neck and the blood was coming out from her right eye. The complainant inquired about husband and daughter of deceased but no body had any clue in that regard. The complainant had an apprehension that Santosh Kumar alias Pappu had killed his wife Preeti on the previous night and then ran away by taking his daughter along with him. The complainant leaving Pawan Kumar at site went to Police Post, Sector-16, Panchkula to lodge report regarding the incident.

There at the police post, complainant Krishan Pal Jain got his statement Ex.PA recorded with SI Isham Singh (hereinafter referred to as the Investigating Officer/IO). The statement was signed by Krishan Pal Jain in Hindi and his signatures were attested by SI Isham Singh. Therefore, finding that offence under Section 302 IPC was disclosed, the Investigating Officer appended his endorsement Ex.PE below such statement and sent ruqa to Police Station Sector-5, Panchkula through

EHC Mohan Lal on the basis of which formal FIR Ex.PE/1 was recorded.

Thereafter, the police party led by SI Isham Singh and accompanied by complainant went to the place of incident. The Investigating Officer carried out the spot inspection and he prepared rough site-plan of the place of incident as Ex.PF. The Investigating officer had observed dead body of Preeti lying in *jhuggi* No.523 on a *Takhtposh* (wooden bed). A blue colour saari was tied around her neck with a knot which was firmly made. The Investigating Officer got that place and dead body photographed. He carried out inquest proceedings with regard to unnatural death of Preeti during the course of which he recorded statements of Ram Chander, Pawan Kumar, etc. Dead body was identified to the Investigating Officer by Krishan Pal Jain. The Investigating Officer prepared a report in that respect as Ex.PG. He sent dead body for post-mortem examination through Constable Suresh by giving application Ex.PH to him. After post-mortem examination, two sealed parcels were produced before the Investigating Officer, one containing clothes of deceased and second containing her ornaments. Those two parcels were taken into possession vide recovery memo Ex.PB. Since despite waiting for two days, relatives of Preeti had not come forward to claim her body as such the dead body was cremated through Aggarwal Sabha, Sector-16, Panchkula. The Investigating Officer had got prepared scaled site-plan Ex.PD. The accused was arrested on 16.6.2001. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Panchkula.

On presentation of challan in the Court of Chief Judicial Magistrate, Panchkula, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Chief Judicial Magistrate, Panchkula vide his order dated 23.8.2001 committed the case to the Court of learned Additional Sessions Judge, Panchkula.

On receipt of case in the Court of learned Additional Sessions Judge, Panchkula, observing that prima facie charge for offence under Section 302 IPC was disclosed against the accused, the accused was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twelve witnesses as under:

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|------|---|-------------------------------------|
| PW1 | - | Krishan Pal Jain |
| PW2 | - | Ram Chander |
| PW3 | - | Dr.Sadbhawna Pandit |
| PW4 | - | Constable/Draughtsman - Manohar Lal |
| PW5 | - | Balbir Singh |
| PW6 | - | EHC Mohan Lal |
| PW7 | - | Constable Satpal |
| PW8 | - | Sant Lal |
| PW9 | - | Inspector Sham Singh |
| PW10 | - | Sub-Inspector Isham Singh |
| PW11 | - | Inspector Rattan Singh |
| PW12 | - | Inspector (Retd.) Dilpazir Singh |

With that the prosecution evidence stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

The accused did not lead any evidence in his defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left him aggrieved and he has filed the present appeal praying that the same be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against him.

We have heard learned counsel for the appellant-accused-convict – Santosh Kumar and learned Assistant Advocate General for the State of Haryana besides going through the record and we find that there is no merit in the appeal and it is liable to be dismissed.

It needs to be mentioned here that in the instant case no direct evidence of the incident is available, rather the case rests upon circumstantial evidence. However, the chain of events is complete and no doubt is left in the mind about accused Santosh Kumar having committed murder of his wife Preeti.

As far as the witnesses examined by the prosecution to prove its charge, PW1 Krishan Pal Jain – complainant had informed the police by making statement Ex.PA that dead body of Preeti was lying on a *Takhtposh* in *jhuggi* No.523 with a *saari* of blue colour having been tied around her neck.

PW2 Ram Chander, a resident of *jhuggi* No.524, Rajiv

Colony, Sector-17, Panchkula deposed that during night of 12.5.2001, while he was in his *jhuggi* No.524, he heard the noise of beatings given to Preeti by her husband Santosh Kumar - accused and Santosh Kumar continued beating his wife for about 3 hours from 11:00 p.m. to 2:00 A.M. at night. The witness stated that he heard accused saying to Preeti that she had slept one night in *jhuggi* No.529. He further stated that he came to know during evening hours of 13.5.2001 that Preeti had died. Thus, from his testimony, it comes out that accused suspected the moral character of his wife Preeti and as such on 12.5.2001, he had given severe beatings to her for about 3 hours from 11:00 p.m. to 2:00 A.M. at night.

PW3 Dr.Sadbhawna Pandit, Medical Officer, General Hospital, Department of Pediatric, Sector – 16, Chandigarh, who on 14.5.2001 performed post-mortem examination on the dead body of Preeti had observed that rigor mortis was absent in all four limbs; that blood stained fluid was oozing out from right eye, nose and ears; that a continuous round ligature mark was seen around the neck; that abrasions were seen below right eye with ecchymosis, eyeballs protruded. Whereas injury No.2 was a lacerated wound of 3.5 cm x 2 cm seen on mid side of right knee and abrasion on the lower leg and right ankle. The witness stated that in her opinion, the cause of death in this case was asphyxia due to strangulation. She proved copy of post-mortem report as Ex.PC. Thus medical evidence also strengthens the prosecution story that it was a homicidal death inasmuch deceased was strangled by pressing her neck with Saari.

PW4 Constable/Draughtsman Manohar Lal happened to be

a formal witness only, who had just prepared scaled site plan of the place of incident as Ex.PD.

PW5 Balbir Singh, Photographer from Karambir Studio, Panchkula, who had gone to the spot and taken three photographs at the instance of police on 13.5.2001 proved the photographs as Ex.P1 to Ex.P3 and negatives as Ex.P4 to Ex.P6.

PW6 EHC Mohan Lal was again a formal witness, who on 13.5.2001 after ruqa having been handed over to him by ASI Isham Singh to deliver the same at Police Station Sector-5, Panchkula for registration of the case, he stated that he had handed over the ruqa to MHC Prem Chand and after recording the FIR, he returned to the police post along with ruqa.

PW7 Constable Satpal stated that on 13.5.2001, a special report was handed over to him by SI Sham Singh to deliver the same to the Illaqa Magistrate, SP Panchkula and other police officers. He delivered the same to the Illaqa Magistrate, SP and other police officers.

PW8 Sant Lal deposed that he had been residing in *jhuggi* No.530, Rajiv Colony, Sector-17, Panchkula whereas Santosh Kumar was residing in front of his *jhuggi* in *jhuggi* No.523 along with his wife and daughter. The witness stated that on 12.5.2001, after taking dinner, he slept on roof of his *jhuggi* No.530; that Smt.Preeti (since deceased) was sleeping on the roof of her *jhuggi* No.529; that accused Santosh Kumar was not present; that he asked Preeti that she should call her husband and she had gone to her house to call her husband; that she came and informed him that her husband would be coming within a few minutes. Going further, the witness stated that the accused came 15-20

minutes thereafter and he started quarrelling with Preeti; that he separated them. Thereafter, accused took his wife to his house (Jhuggi) and bolted it from inside; that he heard noise of beatings from inside the room and on the next morning at about 5:00/6:00 A.M., when he came down from the roof of his house, he had seen that accused Santosh Kumar was going along with his daughter; that his house (Jhuggi) was bolted from outside. Thereafter, in routine, he had gone to his duty and when he returned in the evening, he came to know that accused had run away after killing his wife. Testimony of this witness throws considerable light on the issue. The death of Preeti is said to have taken place on the intervening night of 12/13.5.2001. According to this witness on 12.5.2001 itself at night, he had seen accused Santosh Kumar quarrelling with Preeti and he had separated them. Then both of them went to their house (Jhuggi) which was bolted from inside. The witness stated that he had heard noise of beatings from inside the room. Thus, quarrel between accused and Preeti deceased soon before her death and accused giving her beatings also stands proved. As stated by this witness, on the next morning i.e. 13.5.2001, he had seen Santosh Kumar going along with his daughter and house was bolted from outside. He was not accompanied by Preeti at that time. As per prosecution story, Preeti had been done to death by the said time. The whole sequence of events lead to only one conclusion that it was accused Santosh Kumar, who had committed murder of his wife Preeti, beating her in their *jhuggi* which was bolted from inside and thereafter going away from that place along with his minor daughter. Of course Santosh Kumar was the person last seen in company of deceased. It was for him to explain as to how

and under what circumstances Preeti had died. It was all the more so when she had died in the matrimonial home, therefore, accused Santosh Kumar being husband of Preeti had special means of knowledge in that regard, which he was bound to explain but he has failed to do so. Again needle of suspicion goes towards him. Cross-examination of PW8 Sant Lal is also very important, in which he stated that on 8.5.2001, Preeti had slept in his house; that she had come to his house of her own and that on her asking he had slept with her that night. That also strengthens the prosecution story regarding accused being aggrieved with his wife Preeti over her extra marital relations.

PW9 Inspector Sham Singh deposed regarding the investigation conducted by him so did PW10 Sub-Inspector Isham Singh.

PW11 Inspector Rattan Singh had filed the challan whereas PW12 Inspector Dilpazir Singh arrested the accused in this case stating that he had done so on 16.6.2001 from a place called Labour Chowk, Panchkula.

Thus, we find that keeping in view the totality of circumstances i.e. accused having been last seen in company of deceased before her death; that the accused was seen quarrelling with his wife soon before her death, death of Preeti having taken place in the matrimonial home; that the accused not informing the police or any other person in that regard and rather keeping quiet; that the accused not coming up with any explanation as to how and under what circumstances his wife Preeti had expired, when he being husband of the deceased residing in the same house/jhuggi is supposed to have special

means of knowledge in that regard in terms of Section 106 of the Evidence Act; that accused locking the door of jhuggi from outside and along with minor daughter of the parties going away from there and being on run for more than one month till he was arrested by the police in this case; that motive of the incident being also there that accused being aggrieved by the extra marital affair of his wife Preeti, all these factors when seen together, lead to only one inference that it was accused Santosh Kumar who had committed murder of his wife Preeti. Thus, the prosecution has successfully proved its charge against the accused beyond the shadow of reasonable doubt.

The judgment of conviction and 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 sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that accused Santosh Kumar is on bail in terms of the order dated 13.11.2007 passed by this Court. The bail order is cancelled. He is ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Panchkula.

20.3.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

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