

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

CRA-D-915-DB of 2003

Date of decision :- 24.4.2017

Nootan

....Appellant

Versus

The State of Haryana

....Respondent

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

Present : Mr.R.N. Singal, Advocate
for the appellant.

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

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 15.10.2003 passed by the Court of learned Additional Sessions Judge (Ad hoc), Fast Track Court, Hisar vide which accused Nootan was convicted for offence under Section 302 IPC read with Section 34 IPC and order dated 18.10.2003 vide which she was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- and in default thereof, to undergo further rigorous imprisonment for a period of six months.

The accused-convict, who is appellant before this Court

prays that the appeal be accepted, the impugned judgment of her conviction and order of sentence be set aside and she be acquitted of the charge framed against her.

Briefly stated, the prosecution story as it unfolded during the trial is that on 21.11.2000 at 11:40 p.m., a V.T. message was received at Police Station Sadar, Hisar from PCR, Azad Nagar, Hisar to the effect that dead body of an unknown person was lying in House No.16, Adarsh Nagar, Hisar and Investigating Officer be sent there. Accordingly, a police party headed by SI Ami Chand from Police Station Sadar, Hisar proceeded to the spot. On the way, the police party came across a raiding party consisting of ASI Ranbir Singh and Constable Inder Singh and they were also associated with the police party headed by SI Ami Chand. On reaching the place of incident, the police party came across complainant Kuldeep Singh son of Thandi Ram, resident of Kherri Lochap, Police Station Narnaund, aged 21 years, at that time putting up as tenant in House No.16, Adarsh Nagar, Azad Nagar, Hisar. Complainant – Kuldeep Singh got his statement Ex.16 recorded with SI Ami Chand.

Inter alia, he stated that he is a school Teacher by avocation and had taken two rooms of House No.16, Adarsh Nagar, Azad Nagar, Hisar on rent in which he along with family members and relatives had been putting up for last about 1 ½ months; that since one room in the house was vacant as such it was rented out to two persons along with one woman, who had come to them about six days earlier; that out of those persons one of them had introduced himself as a lawyer whereas the introduction of the second person was given as *Munshi* working with

the lawyer and woman as wife of the *Munshi*. According to the complainant at the asking of the lawyer, he gave the room and the adjoining store to the *Munshi* and his wife on payment of Rs.550/- per month as rent. During that time, the lawyer who had got the portion in the house rented out came to meet *Munshi's* wife thrice on different dates. On 20.1.2000 at about 5:30 p.m. in the evening, the deceased came along with the *Munshi*; that the *Munshi* used to go out of home daily during the day time and would return at about 5:00 p.m.; that on 20.1.2000 at about 8:00 p.m. when the complainant was washing his clothes, he heard cries of a man twice and as such he left bathroom and being accompanied by his cousin brother Rohtash, who had been residing with him went there and knocked at the door of room of *Munshi*; that *Munshi* opened the door partly, came out of room and told that the person, who had come along with him was having fits of epilepsy (*mirgi*) and therefore he was crying. According to the complainant, through the opened door, he saw that deceased was lying on the cot in the room and his feet were in the air, whereas face was covered with cloth; that at that time wife of *Munshi* was preparing meals on the stove; that *Munshi* had then closed the door; that thereafter, complainant and Rohtash become busy in their own work; that on 21.11.2000 in the morning, complainant and others went outside the house in connection with their work while *Munshi* along with his wife and deceased remained in the room; that when in the evening at about 6:30 p.m., complainant and Karampal returned home, they found the room of *Munshi* to be locked; that at about 8:30 p.m., they felt the necessity of cooker which was not with them at that time because a day

earlier it had been borrowed by the *Munshi* from them; that in search of cooker, the complainant peeped through the window of the room since it was opened partly and observed that there was no article in the room except a folding cot; that they inquired from the neighbour and came to know that *Munshi* and his wife had taken away their luggage in three-wheeler auto rickshaw at about 9:00 in the morning; that after making necessary enquiry, the complainant broke open the lock of the room of *Munshi* in presence of the neighbours and found it to be vacant. The door of the adjoining store was closed and on opening it, they found the man, who had come along with *Munshi* on 20.11.2000 in the evening was lying dead on a *fatta* (plank) and a rope made of jute tied around his neck. In the statement, the complainant had alleged that the said person (the lawyer) had been murdered by *Munshi* and his wife by way of strangulation with the help of rope and thereafter they have fled from there after locking the door of the room.

The complainant had informed the PCR of Azad Nagar about the incident and when the police party arrived there, he got his statement recorded with SI Ami Chand. The statement was signed by Kuldeep Singh – complainant. His signatures were attested by SI Ami Chand, who put his endorsement below said statement and sent ruqa to police station from the spot at 1:30 p.m., on the basis of which formal FIR Ex.PW16/A was recorded at Police Station Sadar, Hisar for offences under Sections 302/34 IPC under signatures of SI Balwan Singh. SI Ami Chand prepared the rough site-plan of the place of occurrence as Ex.P26. He carried out inquest proceedings with regard to the dead body of the unknown person preparing report Ex.P27 in that

regard. He drafted an application Ex.P28 and gave it to Constable Inderjit Singh directing him to get the post-mortem examination conducted on the dead body. Then SI Ami Chand recorded statements of witnesses. He summoned a photographer to the spot, who took photographs of the dead body. After post-mortem examination, viscera of the deceased placed in a container was handed over by the doctor to Constable Inderjit Singh, who had produced it before SI Ami Chand. It was taken into possession vide recovery memo Ex.P23. On return to the police station, SI Ami Chand deposited the case property with MHC. He made efforts to trace and arrest the culprits but to no effect. Both of them were declared as proclaimed offenders. Inspector/SHO Maan Singh from Police Station Sadar, Hisar, who along with other police officials was on patrol duty on receiving the information had also reached the spot while SI Ami Chand was conducting the investigation. The investigation was taken over by Inspector Maan Singh who during the spot inspection found the register Ex.P13 from the spot. The said register along with a letter in Hindi Ex.P14 was taken into possession vide recovery memos Ex.P34. The insurance certificate of the vehicle bearing registration No.DL-2CD-0064 which was found at the spot was taken into possession vide recovery memo Ex.P35, such insurance certificate being Ex.P15. Two bangles Ex.P37 and Ex.P38 were also found there which were converted into a sealed parcel and then taken into possession vide recovery memo Ex.P39.

On 24.11.2000, Inspector/SHO Maan Singh got the clothes of the deceased identified from his close relatives and his identity was revealed as Satbir Singh son of Bhagwana Jat, an Advocate of village

Bheni Akbarpur, District Hisar. The clothes were again converted into a parcel and sealed with the seal of Inspector Maan Singh.

SI Ami Chand on 7.6.2001 during investigation collected photographs of Rameshwar and Nootan from their close relations in Sikanderabad (U.P.), photograph of Rameshwar being Ex.P17 and photograph of Nootan being Ex.P18. Vide recovery memo Ex.P32, photographs Ex.P29, Ex.P30 and Ex.P31 had been taken into police possession during investigation by SI Ami Chand.

On 3.9.2002, accused Nootan was arrested from Agra by SI Balbir Singh and she was brought to Police Station Sadar, Hisar on 4.9.2002. She was interrogated in presence of ASI Dharambir and Lady Constable Sheela. She suffered a disclosure statement Ex.P42 regarding the incident offering to point out the place of occurrence. Nootan accused was remanded to police custody for one day and on 5.9.2002, Nootan while in police custody led the police party to the house in Azad Nagar and pointed out the house and place of occurrence in presence of Ashok, owner of house and HC Vijay as well as ASI Dharambir. A memo in that regard Ex.P24 was prepared. After completion of investigation and other formalities, supplementary challan against accused Nootan was prepared and filed in the Court of Additional Chief Judicial Magistrate, Hisar.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Hisar, he supplied copies of documents relied upon in the challan to accused Nootan free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Additional Chief

Judicial Magistrate, Hisar vide his order dated 24.10.2002 committed the case to the Court of learned Sessions Judge, Hisar from where it was entrusted to the Court of learned Additional Sessions Judge (Ad hoc), Fast Track Court, Hisar.

When the case was received in the Court of learned Additional Sessions Judge (Ad hoc), Fast Track Court, Hisar, he finding that prima-facie charge for the offence under Section 302 read with Section 34 IPC was disclosed against the accused, charge-sheeted her accordingly, to which, she pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as eighteen witnesses as per details below:

PW1 Mahender son of Bhagwana Ram, aged 45 years, resident of village Bharian stated that on 24.11.2000, he had gone to premises of Police Station Sadar, Hisar where the photographs of the dead body and clothes of deceased i.e. *kurta*, pyjama, *baniyan*(vest), *kachha* (underwear) were shown to him which he identified to be those belonging to his younger brother Satbir. The witness stated that Satbir was an advocate by profession and used to sit in the Court at Hisar. The witness identified belongings of his brother i.e. wrist watch (Ex.P1), *challa* (Ex.P2), photo Om (Ex.P3), photo Mata (Ex.P4), *kurta* (Ex.P5), pyjama (Ex.P6), *baniyan* (vest) (Ex.P7) and *kachha* (underwear) (Ex.P8). He stated that an identification-cum-recovery memo of those articles were prepared as Ex.P9 and he had signed the same.

PW2 HC Ramesh Kumar, Reader to DSP, Headquarter, Hisar deposed that on 22.11.2000, Inspector Maan Singh had taken into

possession a register, a letter and insurance certificate vide recovery memos being Ex.P10, Ex.P11 and Ex.P12. He proved original register as Ex.P13, letter as Ex.P14 and insurance cover as Ex.P15 stating that those documents were taken into possession through the recovery memos aforesaid and the *chooris* (bangles) were recovered from the place of occurrence vide recovery memo Ex.P12.

PW3 Kuldeep Singh – complainant deposed as per the prosecution story.

PW4 Karampal, a family member of complainant deposed on almost the same lines as that of complainant Kuldeep Singh appearing as PW3.

PW5 Lakhan Singh, aged 28 years, working in Jindal Factory, Hisar stated that about 2 ¼ years earlier (his statement was recorded in the Court on 8.2.2003), he used to reside in Chhoti Satrod in the house of Diwan Singh son of Pat Ram where Bhagwan Singh also used to live with him; that Rameshwar and Nootan were known to Bhagwan Singh as they had come with Bhagwan Singh in October and they resided in the house of Diwan Singh son Pat Ram with him for about 20-22 days; that Rameshwar and Nootan wanted to marry by order of the Court. The witness stated that he was instrumental in their introduction with Satbir Singh, Advocate; that he had told Rameshwar and Nootan that he could no longer bear their expenses and he would arrange other accommodation for them. Accordingly, he did so and they shifted to portion of a house owned by Prem Pandit son of Gori Shanker; that after 2-3 days of their shifting, he asked them and they told him that there was a talk going on between them and the counsel

Satbir who had told them that he would get the needful done; that then Satbir, Advocate had brought them in Azad Nagar, where they had shifted.

PW6 Constable Kulbir Singh, a formal witness tendered in evidence his affidavit Ex.P20 praying that the same be read as a part of his statement.

PW7 Raju, Draughtsman deposed that on 9.5.2001 on the indications of SI Ami Chand, he had prepared scaled site-plan of the place of incident as Ex.P21 using the scale of 1 inch = 8 feet on the demarcation of Kuldeep Singh son of Thandi Ram.

PW8 Ranbir Singh from CID Crime, Panchkula stated that on 22.11.2000, he was posted at Police Station Sadar, Hisar. On that day Constable Inder Singh brought post-mortem report and parcel of belongings of the deceased from the hospital and such parcels had been taken into possession by SI Ami Chand vide recovery memo Ex.P22 attested by him (this witness). He stated that parcel of the viscera had been seized by SI Ami Chand vide memo Ex.P23 which was also attested by him.

PW9 Ashok Kumar son of Jai Gopal, aged 47 years, resident of Krishana Nagar, Hisar stated that on 5.9.2002, Nootan was brought by police at his house; that one lady police official was also there; that then Nootan had identified the place of occurrence in his presence by indicating the place of incident and that a memo in that regard was prepared as Ex.P24, which was attested by him.

PW10 SI Ami Chand, who had conducted the investigation in this case initially deposed in that regard.

PW11 Constable Inder Singh, a formal witness submitted his affidavit Ex.P33 praying that the same be read as a part of his statement.

PW12 Inspector Maan Singh, since promoted as DSP, who had also carried out investigation in this case having taken over the same from SI Ami Chand on 22.11.2000 testified regarding what had been done by him in this case.

PW13 Head Constable Hans Raj, again a witness of formal nature submitted his affidavit Ex.P40 praying that the same be read as a part of his statement.

PW14 Shiv Kumar stated that car in question was insured with Oriental Insurance Company. He proved the cover note as Ex.P15 stating that Rajinder Kumar is recorded owner of the car, which had been insured vide the said cover note.

PW15 Koshal Kishore Verma, Principal of Sunrise Seth Bola Ram Public School, Sabasti Nagar, Naripura, Agra had brought the attendance register of their school stating that Rameshwar Sayal worked in their school as teacher from 10.7.2000 to 21.8.2000. He proved photocopy of the register in that regard as Ex.P41. He further stated that Nootan had worked in their school from 18.7.2000 to 14.8.2000.

PW16 ASI Dharambir, a witness of the disclosure statement said to have been made by accused Nootan in police custody on 4.9.2002 before Inspector Ram Kumar and then while in police custody her pointing out the place of incident deposed in that respect.

PW17 Inspector Ram Kumar, who had interrogated Nootan while she was in police custody on 4.9.2002 in presence of ASI

Dharambir and Lady Constable Sheela Devi before whom she had suffered disclosure statement and thereafter in pursuance thereof had pointed out the place of occurrence, testified regarding those facts.

PW18 Dr.Gopal Bhardwaj, Medical Officer, G.H. Hisar who along with Dr.Ajay Gupta was member of Board of doctors constituted to conduct post-mortem examination on the dead body of the deceased deposed that the post-mortem was conducted on application Ex.PF. It was a dead body of an unknown person, aged 38 years male, which had been brought by Constable Inderjit Singh and identified by Kuldeep and Karampal. It was a dead body of a young male wearing white shirt, pyjama, *baniyan* (vest), greenish *kaccha* (underwear), wrist watch and left forearm with brownish lather strap, white metallic ring in the right middle finger, black thread with two *tabiz* in neck. Rigor mortis was absent with post-mortem staining over back. Face was livid greenish dissection over both iliacfosa, eyes were congested with sub conjunctival haemorrhage. Clotted reddish dark blood stains over both side of face. There was a rope tied round the neck. Rope was having two circles, one was knotted, other was unknotted. Rope was removed after cutting without disturbing the knot.

There was a transverse ligature mark uninterrupted all around the neck. Deep grooved corresponding to the rope. Crossing at the level of larynx 1.4 c.m. in breadth. On dissection there was a dark effusion of blood in subcutaneous both hyoid bones were fractured and there was clotted blood in larynx and trachea.

1. Multiple abrasion with dark red clotted blood over both the side of over both side of face measuring 1

c.m. x 1/2 c.m. x 1/2 c.m.

2. Contused abrasion over right scapula 1.5 c.m. x 1 c.m. dark reddish clotted blood.
3. Contused abrasion 2 c.m. x 1 c.m. on back of right elbow with dark reddish clotted blood.
4. Contused abrasion 1 c.m. x 1/2 c.m. on anterior aspect of middle of neck with reddish clotted blood.
5. Contused abrasion above left middle malleolus 1 c.m. x with dark reddish clotted blood.

On dissection of these injuries effusion of blood in subcutaneous tissue. Pleura were congested. Larynx were congested. Right and left lungs healthy and congested and heart chamber left was partly full. Right was full. All others organs were healthy and congested. Stomach contained food. Small intestine chyme and large intestine contained chyle and large containing faecal matter.

This witness further deposed that cause of death in their opinion was asphyxia due to strangulation, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. To rule out any concomitant poisoning, viscera was sent to FSL for examination. This witness state that in report of FSL Ex.P43 it has been reported that there was no common poison present. This witness further stated that the time elapsed between the injuries and death was within minutes and death and PMR 36 to 48 hours. He proved inquest report duly attested by them as Ex.P27, application for conducting post-mortem examination as Ex.P28, post-mortem report as Ex.P44, diagram showing location of injuries as Ex.P44/A, rope as Ex.P45.

Learned Public Prosecutor tendered in evidence FSL reports Ex.P46 and Ex.P47 and closed the evidence of prosecution.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against accused were put to her but she denied the allegations contending that she was innocent and had been falsely implicated in this case. She further took up a plea that she does not know why she had been implicated in this case; that she did not know what had been happening now and that Bhagwan Singh was friend of his husband and both of them had got her implicated in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left her aggrieved and she has filed the present appeal.

We have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana besides going through the record and we are of the considered view that the impugned judgment of conviction and order of sentence passed by the learned trial Court are not sustainable and are liable to be set aside by way of acceptance of appeal.

This is a case based upon circumstantial evidence since no witness is coming forth to state that he had seen accused Nootan and Rameshwar committing murder of deceased Satbir. The law is well settled that in such an eventuality, the chain of the events must be complete and there should be only one hypothesis which in consonance with guilt of the accused besides there being a strong motive for the

incident. Here there are many vital links in the chain missing with no visible motive being alleged or proved by the prosecution and there are glaring circumstance which do not support the theory of accused being guilty of murder of Satbir sharing common intention with Rameshwar. The entire approach of the trial Court in coming to the conclusion that charge against accused – convict stood proved has been erroneous and against settled principles to determine the liability in a criminal case.

The trial Court in para No.24 of the judgment has based reasoning on conjectures and suppositions observing that a young man of about 38 years could not be strangled successfully in this manner by Rameshwar single handedly and by figment of imagination referring to photographs of dead body and Rameshwar as well as photograph of Nootan had observed that deceased was far stronger in built than Rameshwar, the so called husband of Nootan and the way rope appears to have been given two rounds around the neck shows that it could not be the handiwork of a single person and that besides Rameshwar, Nootan was the only person, who could be present in that portion of the house where Satbir was done to death and as such the trial Court drew the presumption that either she was consenting party or actually participated in murder of Satbir by Rameshwar and in either event she is responsible for the murder equally with Rameshwar since it was done with her consent in her presence, she would be deemed to have common intention and the act having been done in furtherance of the common intention by both of them. The entire approach of the trial Court, to say the least, has been wrong. The trial Court worked on the premises that rope had been tied around neck of deceased by Rameshwar but giving

strange reasoning observed that it could not be handiwork of a single person. From where the trial Court has come to the conclusion that deceased was much more stronger than Rameshwar and Rameshwar could not possibly have tied rope around his neck alone has not been found to be convincing. The only basis for such observations are the photographs. One cannot possibly judge the strength and power of a person from the photographs. A lean and skinny person may be much more active, strong and sharp than a person with a heavy built. The photographs relied upon do not depict the complete and detailed physique of the deceased and the accused. There is nothing on record to show that appellant – accused – convict shared prior meeting of mind with Rameshwar to commit murder of the deceased. Merely because she was in the room where the murder was committed and she did not raise any hue and cry at that time does not lead to the inference that she was a consenting party to the murder or that the deceased had been done to death by Rameshwar in furtherance of common intention of both the accused. No criminality could be attributed to the accused – convict in such a manner. She might have been a mute spectator to the murder of deceased being committed by Rameshwar out of fear or shock so much so she could not summon courage to raise hue and cry but her silence and inaction in the matter cannot result in any criminal liability being fastened upon her that too for a serious offence of murder. The subsequent conduct of Nootan leaving the house in company of Rameshwar in the morning on the next day of day of incident, taking away all the household articles though could be taken as an incriminating circumstance against her but that alone could not be

conclusive to establish the charge against her. As regards accused suffering a disclosure statement and pointing out the place of incident to the police in pursuance of the disclosure statement the same does not have much significance keeping in view the totality of the facts and circumstances. The place of incident was already known to the police, the complainant and the persons of the locality. Therefore, the disclosure statement, if any, suffered by the accused does not help the prosecution in strengthening its case.

Furthermore, the prosecution has been unable to show as to why the accused would go to the extent of committing murder of the deceased. It is not case of prosecution that the deceased had been making any sexual advances towards the accused and on getting annoyed she in consultation with Rameshwar decided to do away with the deceased Satbir. According to prosecution story, deceased was helping the couple in getting married and seeking order in that regard from the Court. If that was so, where was the occasion for the accused to commit murder of Satbir. Therefore, the inference to be drawn is that there was no motive or reason for the accused to go to the extent of being actively involved in murder of Satbir or showing acquiescence for doing so by Rameshwar.

One more thing to be taken into consideration is that the prosecution story that Kuldeep and Karampal on hearing the cries had gone to the room of Rameshwar and when they knocked at the door, Rameshwar opened the door partly telling that Satbir was suffering from epilepsy and for that reason he was crying and thereafter he had closed the door. But complainant Kuldeep Singh appearing as PW3 stated in

his cross-examination that he had not noticed any rope in the neck of the man lying on the cot when the door was opened a little by the Munshi and accused Nootan was preparing the food in the room. That clearly goes to show the non-participation of accused in the crime. It is highly unlikely that after murdering Satbir, Nootan would suddenly start doing the cooking work in such a manner with dead body of a person murdered some moments earlier lying nearby. For that matter Rameshwar would not have opened the door in that way. Furthermore, a reason for the complainant going to the room given to Rameshwar has been mentioned that Rameshwar had borrowed cooker of complainant a days earlier which was not returned but then no such cooker was recovered during investigation of the case. The whole story does not come out to be plausible and convincing.

The prosecution has been unable to prove its charge against the accused beyond a shadow of reasonable doubt. There are many important and vital links missing in the chain of events and reasonable doubt arises in the mind about truthfulness of the prosecution story. The benefit of doubt should have been given to the accused by the trial Court but it was wrongly denied.

Therefore, the judgment passed by the trial Court suffers from various illegalities and infirmities as detailed above and is based upon misappraisal of evidence and wrong interpretation of law. The same is not sustainable. Therefore, appeal is found to have merit and the same is accepted. The impugned judgment of conviction and order of sentence is hereby set aside by way of acceptance of appeal. Resultantly, accused – convict is ordered to be acquitted of the charges framed

against her. She is on bail. Bonds furnished by her are hereby discharged.

24.4.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No