

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

CRA-D No.640-DB OF 2010 (O&M)
DATE OF DECISION : 6TH MARCH, 2018

Rohtas

.... Appellant

Versus

State of Haryana

.... Respondent

CRA-D-No.197-DB-2011 (O&M)

Balbir Singh

.... Appellant

Versus

State of Haryana & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Ashit Malik, Advocate
for the appellant in CRA-D-640-DB-2010 &
respondent in CRA-D-197-DB-2011.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. H. S. Brar, Advocate
for the appellant in CRA-D-197-DB-2011 and
complainant in CRA-D-640-DB-2010.

Mr. Vivek Saini, Deputy Advocate General, Haryana.

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A. B. CHAUDHARI, J.

1. The appellant-Rohtas has filed appeal bearing CRA-D-No.640-DB-2010, being aggrieved by judgment and order dated 04.05.2010 passed by Sessions Judge, Sonipat in Sessions Case No.68 of 2006/2009, in case FIR No.191 dated 27.08.2006 registered under Sections 498-A, 304-B and 302 read with Section 34 of the Indian Penal Code (IPC), by which the appellant Rohtas was convicted for the offence

punishable under Sections 302 IPC and sentenced to undergo imprisonment for life and fine of Rs.10,000/- and in default of payment of fine he has to undergo further imprisonment for a term of one year.

2. Balbir Singh-the victim has filed CRA-D-197-DB-2011 against respondents No.2 to 4 under the aforesaid judgment of the trial Court which had recorded acquittal of respondents No.2 to 4 from the charge under Section 302 IPC.

3. Both the aforesaid appeals are being disposed of by the present common judgment.

Facts:

4. It is the case of the prosecution that in the intervening night of 26 and 27 August 2006, the police received information that Sudesh wife of Rohtas-appellant, of village Rohna was admitted in PGIMS, Rohtak as a case of hanging. ASI Ramesh Chander reached the hospital and obtained the medico legal report dated 26.08.2006 and found that Sudesh had already died. The complainant Sh. Balbir Singh the father of deceased then lodged the report with the police station that his daughter was done to death by the members of her nuptial family. He stated that his two daughters namely Mukesh and Sudesh (deceased) were married with two brothers namely Ravinder and Rohtas-appellant on 03.04.2001. Everything was all right for about six months of marriage of both the daughters. Thereafter, the husband's family started harassing and torturing them for demand of dowry and money. A meeting of the panchayat was arranged to resolve the matter in which Mukesh and her husband separated from the joint family but Sudesh remained in the joint

family. Thereafter, Sudesh was pressurized to bring a sum of ₹2,00,000/- in cash by her husband-Rohtas-appellant and her parents-in-law and other acquitted respondents. The demand was made for establishing a separate shop for Rohtas-appellant. The accused persons demanded a washing machine, a gold chain and ₹1,00,000/- in cash in the *chhuchhak* ceremony through Sudesh. The complainant-Balbir Singh gifted a washing machine and a gold chain but could not meet their demand of ₹1,00,000/- in cash. Nevertheless Sudesh was being pressurized to bring the amount. Three days prior to the incident, Sudesh made a telephone call to her cousin Rajmal, who was asked to tell her father to make demand of ₹1,00,000/-, failing which she apprehend death. Rajmal told the complainant-Balbir Singh accordingly so also other family members. On the fateful night i.e. on 26.08.2006 complainant-Balbir Singh received a phone call that Sudesh was being shifted to PGIMS, Rohtak in a critical condition. He went to the hospital along with his relatives and came to know that Sudesh was throttled by the members of her nuptial family including Rohtas and other accused persons. The FIR for offence under Sections 498-A, 304-B and 302 read with Section 34 IPC, was registered with Police Station Kharkhoda. The postmortem examination was got conducted and the opinion was expressed by the doctors that the death was caused by the asphyxia due to throttling and the injuries were ante mortem. Thereafter accused persons were arrested. The three accused were challaned and produced before the Court. The trial Court ultimately framed the charge under Section 302 read with Section 34 IPC. The trial was held in which the prosecution examined as many as

12 witnesses and closed its case on July 7, 2009. Thereafter an application was filed under Section 319 Cr.P.C. against accused-Satish and he was summoned to face the trial and charge was framed against him. The accused examined one witness in their defence. The trial Court ultimately convicted the appellant-Rohtas and acquitted others. Hence these two appeals, one by Rohtas-convict and the other by Balbir Singh-complainant against acquittal of others.

Arguments:

5. In support of appeal preferred by the convict Rohtas-appellant learned counsel for the appellant vehemently argued that the evidence of PW-1 Mukesh has been categorically rejected by the trial Court itself by giving sound reasons. Her evidence was the only evidence to support the case of the prosecution insofar as the alleged murder is concerned. Insofar as the demand for dowry etc. is concerned, the evidence of PW-1-Mukesh was again liable to be rejected since the reading of her entire evidence indicated that she was not a witness for the truth but had decided to rope in as many accused as she could. She also gave false evidence as if she was eyewitness to the murder which she had never seen but claimed before the Court that she had seen. According to learned counsel for the appellant-Rohtas the trial Court incorrectly and wrongly applied Section 106 of the Evidence Act against the appellant-Rohtas against the settled legal position particularly because the prosecution did not discharge its initial burden of proof about the appellant Rohtas throttling the deceased and allegedly committing her murder. He then submitted that the evidence shows that the family was

living happily and there was absolutely no reason or motive for the appellant to commit the murder of his wife as alleged by the prosecution. He then contended that it was risky to convict the appellant in the absence of any direct evidence and only on the application of Section 106 of the Evidence Act. He, therefore, prayed for recording of order of acquittal of appellant-Rohtas.

6. *Per contra*, learned counsel for the State of Haryana opposed the appeal preferred by appellant-Rohtas and submitted that the trial Court has given convincing reasons for convicting the appellant and reading of the evidence shows that the material evidence has gone unchallenged and at any rate there is absolutely nothing on the record to show that the appellant was not in custody of his wife at the relevant time and therefore, the trial Court has rightly applied the provisions of Section 106 of the Evidence Act. There is no reason to interfere with the impugned judgment and order of conviction and the appeal is therefore liable to be dismissed.

7. In the appeal against acquittal the learned counsel for the appellant-Balbir Singh-complainant vehemently argued that respondents No.2 to 4 were the members of the family of Rohtas and they being the custodian of the deceased along with appellant-Rohtas, were also liable to be convicted for the offence of murder, particularly with reference to Section 106 of the Evidence Act. The trial Court has applied the said reason in case of appellant-Rohtas but failed to apply the same in the case of respondents No.2 to 4 in complainant's appeal, which resulted in miscarriage of justice. According to him the injuries on the person of the

deceased clearly show that more than one person was involved in the murder of the deceased-Sudesh and since respondents were the members of the same family living in the same house they were also liable to be convicted. He, therefore, prayed for reversal of the order of acquittal of respondents No.2 to 4, to the one of conviction.

8. *Per contra*, learned counsel for respondents No.2 to 4 in appeal filed by complainant, opposed the appeal and submitted that the reasons given by the trial Court for acquitting respondents 2 to 4 are strong enough to maintain the order of their acquittal.

Consideration:

9. We have perused the entire record, including the evidence of witnesses who appeared before the trial Court for recording of their evidence and we have also seen the medical evidence. We have also seen the reasons given by the trial Court in the present matter. We have also compared the reasons to find out whether any perversity was committed by the trial Court in making the impugned judgment and order.

10. It is not in dispute that the trial Court had charged the appellant-Rohtas and respondents No.2 to 4 for commission of murder under Section 302 IPC and the charge regarding dowry death was not framed in the trial. It is also not in dispute that the learned trial Court in para 19 of its judgment discussed the evidence of Mukesh-the real sister of the deceased, and found that she was not the witness for the truth and therefore, her testimony was liable to be rejected. We have carefully perused the evidence of PW-1 Mukesh and we are in agreement with the

trial Court in disbelieving the testimony of PW-1 Mukesh and thus rejecting her evidence.

11. The next question is about the medical evidence that was produced by the prosecution in respect of the injuries on the person of the deceased-Sudesh. We quote para 21 from the judgment of the trial Court as under:

“21. Dr. Ved Pal (PW10) and Dr. S.P.S. Batia conducted autopsy on the dead body of Sudesh, a female of 23 years age, on August 27, 2006. The board of doctors found the following injuries on the dead body:-

1. Contusion 2 x 1.5 cm below left mandible, 5 cm below ala of left pinna. On dissection a infiltration of blood was present in underlying tissues.
2. An Abrasion 1 cm x 0.5 cm skin deep, vertically placed 3 cm away and downward on left side of face. On dissection underlying tissues showed ecchymoses.
3. A contusion 0.2 cm x 0.2 cm, round and red coloured was present on left side of the neck. On dissection underlying tissues showed ecchymoses.
4. A contusion 6 cm x 2 cm, red in colour, was present on right side of neck started from 3

cm from midline. On dissection underlying tissues showed ecchymoses.

5. Interrupted rectangular contusion of size 12 x 7 cm in lining present on right side of chest below nipple.

6. Partial rectangular contusions 5 cm x 4 cm were present below left nipple, interrupted.”

12. Perusal of the above report of the Doctor shows that the deceased was severely beaten and therefore she received injuries as aforesaid, which were ante mortem injuries. The defence of the accused was that she had committed suicide. Looking to the above nature of the injuries and the bloody contusions, we are unable to accept such a defence raised by the accused persons. The force with which contusions have been caused was such that in the underlying tissues, there was infiltration of blood because of the external injuries. That clearly shows the violent injuries caused to her upon her resistance to kill her. The injuries are almost on all parts of her body and clearly show the cruelty that was practiced on her. We thus find that the defence theory is bogus and is rejected.

13. Insofar as the murder is concerned, we find that the trial Court has discussed these aspects in para 24 of its judgment regarding the condition of the spot and rightly found that there was hardly any reason to support the theory of defence. Para 24 reads thus:

“24. The investigating officer had summoned a Crime Detection Team from FSL, Madhuban for

preparing the report in respect of the situation obtaining at the scene of the crime. Ms. Kamlesh Rani (PW12) is a Senior Scientific Officer at FSL, Karnal. She visited the spot and prepared the Scene of Crime Report (Ex. PW12/A) which is supported by photographs Ex.P1 to Ex.P6. The negatives of the pictures are Ex. P7 to Ex.P12. A perusal of the report (Ex.PW12/A) goes to show that the occurrence had occurred at the residential unit of the deceased. The father-in-law of the deceased (Taarif Singh) had maintained before the FSL team that Sudesh was found hanging with the ceiling fan in her room. That room had only one entrance with two wooden door planks. Accused Taarif Singh had alleged that the room was bolted from inside by Sudesh before she hanged herself to death and that it was forcibly opened by them. The FSL team did not find any evidence of the force used on the door planks for opening them. All the nuts, bolts and the latches on the inner side of the door planks were found firmly intact. The team did not find any fresh dent/dislocation in the latches. Only first hook of the latch was found bent towards the other hook of the latch which was duly photographed. The ceiling fan allegedly used for hanging was at the height of 97”

from the floor. It had a thick layer of blackish dust on its upper surface. Accused Taarif Singh had alleged that the deceased had used a *chunni* (scarf) for hanging but no such scarf was found at the spot. The blades of the ceiling fan were also not found bent from anywhere. All these facts clearly go to show that the alleged ceiling fan was never used for hanging by the deceased and that it was indeed a case of death due to asphyxia caused by throttling.”

14. Perusal of the aforesaid discussion shows that the ceiling fan had a thick layer on upper surface. If she used *chunni* (scarf) for hanging, some dust of the upper surface would have been definitely disturbed. The blades of ceiling fan were also not found bent from anywhere even slightly. It is thus clear that the theory of suicide has been completely ruled out and has been rightly held by the trial Court.

15. The next question is about the presumption under Section 106 of the Evidence Act. Sudesh died within seven years of her marriage. She had died due to asphyxia caused by throttling within the house. We quote the reasons given by the trial Court in para 26 of the judgment which reads thus:

“26. It may be very safely concluded from the evidence brought on record by the prosecution that Sudesh, a female of approximately 23 years age, is dead and that she had died due to asphyxia caused by throttling on the night intervening 26 and 27 of

August, 2006. She was throttled within her residential unit at about 8.30 p.m. on 26.8.2006. Her husband, namely, Rohtash was inside the house at the time of the fatal attack. Therefore, the provisions of Section 106 of the India Evidence Act would shift the burden upon him to explain the circumstances under which his wife was throttled to death in her own living room on that fateful evening. In **Narendra Versus State of Karnataka 2009(2) Recent Criminal Reports (Criminal) 966 (SC)**, the death of the wife had occurred at her nuptial home within one year of her marriage. The medical evidence suggested that the death was caused by strangulation. There was no eye witness to the occurrence. The apex Court held that Section 106 of the Indian Evidence Act required the accused-husband to show as to how his wife had died since such fact was especially in his knowledge. Since there was no explanation forthcoming from the side of the husband in that case, his conviction under section 302 of the Indian Penal Code was duly upheld. Absolutely similar is the situation obtaining in our case. This Court has already observed that there was no demand of dowry at any point of time. The police had found accused Satish absolutely

innocent and had dropped the charges against him in the final report prepared under section 173 of the Code of Criminal Procedure. Since the parents-in-law never harassed or tortured the deceased on account of the demands for dowry, they too are not bound to explain the circumstances under which Sudesh had suffered the violent death. It is accused Rohtash, the husband of the deceased, who is required to explain as to how his wife had died as a result of throttling very much inside her living room and that too in his own presence on that fateful night. Since no such explanation is forthcoming from his side, the offence punishable under section 302 of the Indian Penal Code stands proved against him.”

16. Upon perusal of the above, we find that the reasons given by the trial Court are legal, correct and are based on proper appreciation of evidence. The trial Court has relied on the law laid down by the Apex Court in the case of ***Narender Vs. State of Karnataka, 2009(2) RCR (Criminal) 966 (SC)***. We have gone through the said decision and find that the appellant-Rohtas the husband of the deceased was under obligation to rebut the presumption under Section 106 of the Evidence Act. He could have entered the witness box in defence but he did not do so. His defence having been found to be false by this Court also and he being custodian of the wife at the relevant time, we think the proposition of law in the case of ***Narender (supra)*** has been rightly applied by the

trial Court in the instant case. We therefore find that there is no merit in the appeal preferred by the appellant-Rohtas and therefore it must be dismissed.

17. Insofar as the appeal against acquittal preferred by the complainant-Balbir Singh is concerned, we find that the trial Court has recorded finding in para 26 itself which we have quoted above, about Satish and parents-in-law of the deceased i.e. respondents No.2 to 4, holding them not guilty. We agree with the aforesaid finding. We further add that the prosecution did not at all anywhere bring evidence before the trial Court to show that respondents No.2 to 4 in the appeal against acquittal were present at the house at the relevant time of the commission of offence. There should be some semblance of evidence to show about their presence but there is nothing. The prosecution did not examine the neighbours to support its case. We think, it would be risky to convict respondents No.2 to 4 by applying Section 106 of the Evidence Act, as contended by learned counsel for the appellant-Balbir Singh in the appeal against acquittal. In para 27 the trial Court has recorded the following finding, which we quote hereunder:

“27. No doubt the evidence on record clearly goes to prove that there was no demand of dowry at any point of time and that accused Taarif Singh, Santosh and Satish may have played no role at all in the violent death of Sudesh but the evidence on record is sufficient to hold that accused Rohtash, the husband

of deceased Sudesh, was present in side his house
alongwith his wife at the time of the fatal attack.”

18. In the result we find that there is no merit in both these
appeals. Hence we make the following order:

ORDER

- (i) Both the appeals i.e. CRA-D No.640-DB OF 2010 and CRA-D
No.197-DB OF 2011 are dismissed.

6TH MARCH, 2018
‘raj’

(A. B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>