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

CRA-D-249-DB of 2012 (O&M)

Date of decision: May 04, 2018

Sandeep

.....Appellant

Versus

State of Haryana

....Respondent

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

Present: Mr. Sameer Sachdeva, Legal Aid counsel for the appellant.

Mr. Vivek Saini, DAG Haryana.

A.B. CHAUDHARI, J

Appellant-Sandeep son of Diwan Singh, being aggrieved by the judgment and order dated 23.02.2011, in Sessions Case No.39 of 2010, passed by the learned Additional Sessions Judge-III, Bhiwani, by which he was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo life imprisonment, and to pay a fine in the sum of ₹1,00,000/- and in default of payment of fine, to further undergo simple imprisonment for one year, has filed the present appeal.

FACTS

The case of the prosecution is that, on 08.04.2010, Diwan Singh son of Molar Ram made a complaint that on the previous night, his younger son Chander Parkash alias Titu along with his wife Reetu were sleeping on the roof of the new house under construction. At about 1:00 AM, Reetu came running to their house (old house) screaming and told them that the

appellant-Sandeep, the real brother of the deceased Chander Parkash had killed Chander Parkash with axe, but she somehow managed to escape. Accordingly, Diwan Singh and his son Anand went along with her to the spot and saw that Chander Parkash had three cut injuries, one on the right side of the forehead, one near the right ear and third on the right side of the neck. The wounds were deep and he had succumbed to the injuries. They brought the dead body along with cot to their house. Appellant-Sandeep committed the murder because Chander Parkash and Anand had given him some beatings in order to make him give up his addiction for drugs. However, appellant-Sandeep took it otherwise and committed the murder of Chander Parkash.

Upon the aforesaid complaint being received, *ruqa* was sent to the police station and FIR was lodged, accused Sandeep was apprehended; investigation was undertaken and after completion of challan, the case was committed to the Sessions Court. The trial Court, thereafter, framed charge which was denied by the appellant. The defence was of denial. The trial Court recorded the evidence of the witnesses and thereafter, convicted the appellant as above. Hence, this appeal.

SUBMISSIONS

In support of the appeal, learned counsel for the appellant vehemently argued that the trial Court has recorded the conviction of the appellant on mere suspicion and in the absence of any concrete evidence, convicted the appellant. The appellant was falsely involved. The prosecution did not have any link evidence nor any neighbourer to the house where the offence is said to have been committed, was examined. There is no evidence

that due to the shout of Reetu or the deceased, any neighbour had heard the same and therefore, the prosecution had withheld the evidence of the material witnesses, i.e. the neighbourers, from the Court. The counsel for the appellant, then argued that the alleged eye-witness PW2-Reetu stated the time of incident 1:00 AM, when, according to the prosecution, the incident had taken place at 10:00 PM. This discrepancy is a major discrepancy, but the trial Court has simply ignored it. He then submitted that the prosecution did not examine any independent witness by asking them to join investigation on the question of discovery and memorandum of spot inspection etc. He next, contended that the other witness PW3-Anand deposed that he never saw Sandeep, but then the police officer deposed that Anand had produced Sandeep before the police, and after that, he was arrested. This discrepancy has again been ignored by the trial Court. He then submitted that the prosecution failed to obtain any fingerprints and therefore, there was failure on the part of the prosecution to prove its case. In the alternative, he submitted that the appellant could not be held guilty of murder as there is no clear motive proved by the prosecution for commission of offence of murder. Therefore, the offence could not be said to have been proved under Section 302 IPC.

Per contra, learned State counsel submitted that there is eye-witness account of PW2-Reetu, which has not been shattered in the cross-examination in respect of the incident in question. When there is evidence of eye-witness, the motive does not become much relevant. At any rate, the motive was proved by the prosecution that the appellant-Sandeep was addicted to drugs and that two brothers, i.e. deceased Chander Parkash and

Anand had given him beatings asking him to leave the habit of drugs. At any rate, according to the prosecution, there is corroborative evidence in the form of medical evidence as well as the evidence of PW3-Anand, his father the complainant and thus, the prosecution has proved its case. Apart from that, the FSL report clearly shows human blood on the axe that was discovered by the appellant himself; apart from the clothes of the deceased and the accused. The appeal has therefore, no merits and thus, should be dismissed.

CONSIDERATION

We have heard the learned counsel for the rival parties at length. We have carefully gone through the entire evidence tendered by the prosecution and considered by the trial Court. At the outset, we find that there is ocular testimony of PW2-Reetu wife of the deceased Chander Parkash. It is true that she is an interested witness because her husband has been murdered, but then the only caution which we are supposed to take is to scrutinize her evidence with full care and caution. That we have done while hearing of the appeal. At the outset, we find no inconsistency of such a nature that her evidence should be discarded. The alleged inconsistency about the time of 10:00 PM and 1:00 AM does not impress us. The reason is that the complaint was lodged by the father of the deceased immediately and thereafter, the FIR was recorded. PW2-Reetu also deposed that she had gone to sleep after finishing household work at 9:00 PM and was sleeping with her husband at about 10:00 PM and that she is illiterate. She did not wear watch also. It is in this background, we are required to give some margin about the time that has been projected by the learned counsel for the

appellant. Therefore, we do not think that mere mention of the time at 1:00 AM would make any difference in the light of the recording of the first information about Diwan Singh, father of the deceased and the recording of the FIR at 8:30 AM by the concerned police after the receipt of information, in which it was mentioned that the incident took place at 10:00 PM in the night. Apart from that PW2-Reetu has clearly stated in her evidence about the incident proper that the appellant-Sandeep had inflicted three axe blows to her husband on the neck, forehead and temporal region and he died at the spot. The appellant ran away from the spot with axe. She went to her father-in-law and narrated the whole incident. Her evidence proper on the discussion of the evidence about the overt act on the appellant has not at all been shattered in the cross-examination, which we have carefully seen. It is interesting to note that PW2-Reetu was married to the deceased Chander Parkash and on the same day of marriage, her sister-Manju was married to the appellant-Sandeep. This circumstance must be read against the appellant in the backdrop of the arguments regarding interestedness of PW2-Reetu. Apart from that, the evidence of PW3-Anand, another brother of the deceased and the appellant, is fully corroborative of the evidence of PW2-Reetu, in that Anand had stated that his father woke him because of screaming made by Reetu that Sandeep had committed murder of her husband on the roof of newly constructed house and thereafter, all of them reached there. Immediate disclosure by Reetu to him is of corroborative nature. The evidence of PW2-Reetu is however, corroborative by *ruqa* Exhibit PB, which was proved by the prosecution witness and the medical evidence also. It is important to note that then there is further corroboration

of a very strong nature of scientific evidence, namely the FSL report and the discovery of incriminating articles including the axe.

The submission that PW2-Reetu did not try to intervene when three blows were simultaneously allegedly given by the appellant on the person of the deceased Chander Parkash, is, in our opinion, too impractical. When the woman-Reetu saw the appellant-Sandeep with axe giving blows to her husband repeatedly, it would be bizarre to expect of a woman to intervene and that her conduct in running away from the said spot, is consistent with her truthful and trustworthy evidence before the trial Court. None would have stopped there or opposed the appellant-Sandeep in the fear of one's own life. The submission will have to be, therefore, rejected.

It can be seen that the medical evidence reads thus:-

“..... Following injuries were found:-

- 1. There was a lacerated wound 7 cms. x 2 cms. at the right temporal region. On dissection, clotted blood was seen and right temporal bone was found fractured.*
- 2. There was incised wound 6 cms. x 2 cms. present on the right side of face, posterior to the pinna of the right ear. On dissection, clotted blood was seen underneath. On further dissection, right maxillary bone was found fractured.*
- 3. There was extensive incised wound 13 cms. x 10 cms. on the right side of the neck. All the major vessels of the neck were found lacerated.*
- 4. There was abrasion of size 3 cms. x 2 cms. present on the right shoulder. On dissection, clotted blood was seen.”*

Perusal of the said evidence clearly shows that it fully

corroborates the evidence of PW2-Reetu.

In so far as the arrest/surrender by the appellant is concerned, whether he was arrested or he had surrendered along with Anand would make no difference as fact remains that he was in police custody and had made disclosure-statement and also discovered the axe, which was used in the crime. The FSL report shows the blood stained clothes of the accused which were having the blood group of the deceased. The weapon axe was stained with human blood and thus, scientific evidence also clearly supported the prosecution case.

In our considered opinion, as a sequel to the above discussion of evidence tendered by the prosecution, it must be held that the appellant-Sandeep committed the murder of his brother in a most cruel manner. In the result, we do not find any merit in the present appeal. Hence, we make the following order:-

ORDER

- (i) CRA-D-249-DB of 2012 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

May 04, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No