

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-781-DB of 2010 (O&M)
Date of decision : 21.11.2018

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Sunil @ Kalla

.....Appellant

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice H.S. Madaan

Present: Mr. Atul Partap Dhankar, Advocate
for Mr. Bijender Dhankar, Advocate for the appellant

Ms. Tanisha Peshawaria, Deputy Advocate General,
Haryana.

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H.S. Madaan, J.

This appeal is directed against judgment and order dated 24.5.2010 passed by Sessions Judge, Gurgaon, vide which he had convicted and sentence the accused Sunil @ Kalla, as under :-

<i>Name of the convict</i>	<i>Offence</i>	<i>Sentence</i>
Sunil @ Kalla	U/s 302 IPC	To undergo imprisonment for life and to pay fine of Rs.10,000/-. In the event of the benefit of provisions of Section 433 (a) Cr.P.C. being extended to this convict for his release upon expiry of 14 years and on his failure on his part to pay the aforesaid amount of fine, to further undergo rigorous imprisonment for three and a half years.

<i>Name of the convict</i>	<i>Offence</i>	<i>Sentence</i>
	U/s 380 IPC	To undergo rigorous imprisonment for seven years and to pay fine of Rs.5,000/-. In default of payment of fine, to undergo rigorous imprisonment for one and a half years.

Both the sentences were ordered to run concurrently.

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

The prosecution story in nutshell is that complainant Kamlesh Chander Kaushik, r/o House No. 241, Sector 5, Part VI, Gurgaon, had engaged accused Sunil @ Kalla for installing pavement stones in the basement of his house on payment of a sum of Rs.5,000/-. However, the accused left the job midway on 19.8.2009, asking the complainant to pay him Rs.1,200/-. However, the complainant paid him Rs.200/- only, promising to pay the balance amount after completion of the work; that on 22.8.2009 the accused resumed the work in the house of the complainant and demanded the remaining amount. However, the complainant refused to make the payment, as such the accused again left the work and went away. However, on 25.8.2009, at about 11.45 A.M. Vinita wife of the complainant made a telephonic call to him, while complainant was in his office. The call was made from mobile phone of the deceased having No. 9911010342 to the mobile phone of the complainant having No. 9212352700, stating that the accused had come to their house to start work. The complainant gave his approval for

resumption of the work. However, on the same day, at about 2.20 P.M. , Ritambara Kaushik, daughter of the complainant informed him telephonically that dead body of Vinita wife of the complainant was lying in the basement with blood oozing out of her head. The complainant accordingly rushed back to his house and observed that his wife was lying dead on a heap of crusher in the basement with blood oozing out from her head. The complainant further found that an amount of Rs.6 - 7000/-, besides 7-8 wrist watches, some jewellery items and mobile phone were missing. He suspected accused Sunil @ Kalla for committing murder of his wife Vinita and committing theft from his house. On the basis of information furnished by the complainant, formal FIR was recorded.

There after investigation in the case started. Post mortem examination was got conducted on the dead body of the deceased. One bamboo stick besides a *karni* (a tool used by masons for plastering cement), blood stained earth were taken into possession from the spot. The accused was arrested in this case on 27.8.2009 from Agra. He was subjected to interrogation, during the course of which he suffered disclosure statements and in pursuance thereof got recovered Sony Erricson mobile phone, wrist watch from his residential house in Agra, which were taken into police possession. Blood stained clothes of accused which included shirt, pant, t-shirt, were seized vide memo. The recovered articles were identified by the complainant to be belonging to him.

After completion of investigation and other formalities, challan against the accused was filed in the Court of Judicial

Magistrate Ist, Class, Gurgaon.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurgaon, copies of documents relied upon therein were supplied to the accused 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, he vide order dated 9.12.2009 committed the case to the Court of learned Sessions Judge, Gurgaon. Learned Sessions Judge, finding a prima facie case, ordered framing of charge for offence under Sections 302, 380 IPC against the accused. It was done accordingly, to which the accused pleaded not guilty and claimed trial.

The case was fixed for evidence of the prosecution, during the course of which, the prosecution examined 11 witnesses, i.e. PW-1 Vijay Sharma, PW-2 Kamlesh Chander Kaushik, complainant, PW-3 Dr. Hazari Lal, PW-4 Dr. Meenakshi, PW-5 Girish Kumar, Draftsman, PW-6 ASI Kamlesh Kumar, PW-7 Constable Sanjeev Kumar, PW-8 HC Rajinder Singh, PW-9 Dr. Saurabh Attri, PW-10 Inspector Udai Raj and PW-11 Ritambara Kaushik, daughter of the complainant Kamlesh Chander Kaushik and deceased Vinita.

On closure of prosecution evidence statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to him, but he denied the allegations contending that he was innocent and has been falsely implicated in this case by planting false recovery of mobile phone and wrist watch. The accused did not lead any

evidence in defence.

After hearing the arguments and on appreciation of evidence adduced by the prosecution, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant, learned State counsel, besides going through the record and we find that there is not even an iota of merit in the appeal. Though there is no eye witness of the incident in the present case, however, the circumstantial evidence brought on file by the prosecution, with all the necessary links being there, clearly points out towards involvement of the accused in the incident. The presence at the spot of the accused at the relevant time is established from the fact and as deposed by the complainant that he had engaged the accused for the purpose of fixing pavement stones in the basement of his house and he had done the work partly receiving some amount, though he had left the work incomplete going on 19.8.2009, again coming on 22.8.2009, starting work, demanding money, giving rise to dispute between them, as such the accused had left the job. However, on 25.8.2009 he came to the house of the complainant again when he was away to the office and his wife – the deceased, has informed him telephonically, on getting his consent, allowed the accused to resume the work. The telephonic call was made around 11.45 A.M. whereas daughter of the complainant and the deceased, Ritambara Kaushik, when returned from school at around 2.20 P.M. had found dead body of her mother lying in the basement with blood oozing out of her head

and had informed the complainant telephonically, who had rushed home and found dead body of his wife to be there. There is time gap of less than three hours, which goes to show that accused being present at the spot and a bamboo stick and *karni* lying there; that several valuable items missing from the home, clearly points out that it was the accused, who had committed the crime. This fact is further fortified when we see that accused had absconded from the spot. If accused had not done anything wrong, there was no reason for him to disappear from the spot after the incident. There is nothing to suggest that some other criminal had entered the house and committed the murder of the deceased besides stealing articles from her house. Then the accused was arrested from Agra on 27.8.2009 i.e. on the third day of the incident and on being enquired he had suffered a disclosure statement on 28.8.2009, he suffered another disclosure statement on 29.8.2009 and in pursuance thereof got recovered mobile phone Sony Erricson and wrist watch said to have been stolen from house of the complainant and the deceased, which was later on identified by the complainant. He also got recovered his blood stained clothes which were taken into possession and on being sent to Forensic Science Laboratory, were found to have human blood. All these circumstances go to show the involvement of accused in the incident.

Further more Section 114 of the Evidence Act provides that the Court may presume existence of certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to

the facts of the particular case. As per illustrations given thereunder, the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Drawing this presumption it comes out that it was the accused who had committed theft of the mobile phone and wrist watch belonging to the complainant/deceased. Applying the principle of *res gestae* under Section 6 of the Indian Evidence Act, it can safely be taken that it was the accused who had committed murder of the deceased and stolen valuable articles in the form of mobile phone and wrist watch therefrom. His clothes which were blood stained and which were got recovered from his residential house, also strengthens this conclusion. The medical evidence in this case corroborates the prosecution story. The other evidence adduced on the record by the prosecution also strengthens its case. A strong motive for the incident also comes out to be there i.e. accused murdering Vinita for the purpose of committing theft in the residential house. In addition to that as it comes out from the statement of the complainant, PW-2 Kamlesh Chander Kaushik, a dispute had arisen between him and the accused, with regard to the unfinished work of installing pavement stones in the basement and payment of dues to the accused. The investigation in this case has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly or sent to face trial. Furthermore, complainant Kamlesh Chander Kaushik, having lost his wife, would have been the last person to screen the actual culprit and involve the accused in this case

wrongly since it is always earnest endeavour of a person who has lost a near relative to ensure that the person responsible for death of his such near and dear one, is brought to book and is punished suitably rather than trying to shield the actual wrong doer and substitute an innocent person in his place. No motive for false implication comes out to be there in this case.

The contentions raised by learned counsel for the appellant that the appellant-accused has been involved on the basis of suspicion only and that the mobile phone and wrist watch have been planted upon him by fabricating a false story, are not plausible or convincing. There is sufficient evidence available on record to connect the accused with the crime and it is certainly not a case of the accused having been convicted on the basis of suspicion only. There was no occasion for the complainant to implicate the accused in this case wrongly and the Investigating Agency indulging in false planting or any fabrication of a wrong story. All these averments are devoid of any merit.

One more contention put forward by learned counsel for the appellant was that the IMEI number of mobile phone has not been mentioned and call details have not been obtained, which puts a doubt in the mind about guilt of the accused. However, we are unable to agree with such assertions. The recovered mobile phone was identified by the complainant to be belonging to him/ his deceased wife. Therefore, non-mentioning of IMEI number does not have any effect.

As regards non-obtaining of call details by the

Investigating Agency, such details if obtained would have further strengthened the prosecution case but absence thereof does not create any dent in the prosecution story, since even otherwise there is enough evidence available on the record to show the involvement of the accused in the incident. It has to be kept in mind that some lapse in the investigation by the Investigating Agency cannot result in giving any benefit to the accused by default.

Learned counsel for the appellant has relied upon the following authorities:-

1. *Tomaso Bruno and another vs. State of U.P. 2015 (1)*

RCR (Criminal) 678;

2. *Audumbar Manohar Randive and others vs. The*

State of Maharashtra and others 1998 (5) BCR 53;

and

3. *State of Maharashtra vs. Prabhu Barku Gade 1995*

(2) BCR 188

As regards, the abovesaid authorities referred to by counsel for the appellant, these are not applicable due to different facts and circumstances of the case, as well as context in which such observations have been made.

The judgment passed by the trial Court is based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The prosecution had successfully proved its charge against the accused beyond the shadow of reasonable doubt. As such the trial Court was justified in convicting and sentencing the accused for the offences for

which he was tried. There is no reason to interfere with the impugned judgment as regards, the conviction or sentence. Rather the appeal is found to be without any merit and is dismissed accordingly.

A copy of this judgment be sent to the quarter concerned for information and necessary action.

(A.B. CHAUDHARI)
JUDGE

(H.S. MADAAN)
JUDGE

21.11.2018
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No