

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-2361-SB-2004
Date of decision:-9.10.2018

Guddu

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Sumanjit Kaur, Advocate
for the appellant.

Ms.Aditi Girdhar, AAG, Haryana.

H.S. MADAAN, J.

Accused Irfan and his brother Guddu (present appellant) were tried by learned Additional Sessions Judge, Panckhula for the offences under Sections 304-B and 498-A IPC and vide judgment dated 27.10.2004 accused Irfan was acquitted of the charges framed against him, whereas accused Guddu was convicted and vide order dated 29.10.2004, he was sentenced as under:

Under Section	Sentence Awarded
304-B IPC	Rigorous imprisonment for a period of seven years.
498-A IPC	Rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.

Both the sentences were ordered to run concurrently.

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

Briefly stated, the prosecution story, as it unfolded during the trial, is that on 26.5.2003 complainant Danish son of Shibad Ali, resident of Main Nagar Ajgaon, Police Station Sandela, District Hardoi (UP), brother of deceased Suman got his statement recorded with SI Balwant Singh at PGI, Chandigarh stating therein that his younger sister, namely, Suman aged about 20/22 years was married with accused Guddu about 1 ½ years back; that he had given dowry articles according to his financial position at that time; that Guddu was working as a labourer; that after marriage Guddu started beating up his wife Suman asking her to bring cash amount from his brother - the complainant so that they could go to Chandigarh/Panchkula and do some job there. According to the complainant, his sister informed him in that regard but he was not in a position to pay any amount; that about 8-9 months earlier, Guddu brought Suman to Panchkula, however their address was not known to the complainant; he tried to inquire from the parental family of Guddu but they did not disclose such address of Guddu; that on 21.5.2003, the complainant received a telephonic information from neighbour of in-laws family of Suman that Suman was admitted in PGI, Chandigarh on account of illness, hearing that the complainant along with Irfan, a brother of Guddu went to PGI on 25.5.2003 and came to know that Suman was

admitted in unconscious condition, however neither Guddu nor his other relative was there with her; that Suman had died at PGI, Chandigarh on 26.5.2003 at 3:00 a.m. According to the complainant, he reached at Panchkula where Suman was residing in *Jhugi* and as verified from him by the neighbours, Guddu used to give beatings to Suman on account of demand of dowry and there were scratch marks on both the sides of neck of Suman and a hidden injury on her head and left eye. According to the complainant, he was of the firm belief that Guddu had given beatings to Suman, as a result of which she had died.

On the basis of such statement, formal FIR was registered. The investigation in the case started. Post mortem examination on the dead body of Suman was conducted by Medical Board of PGI, Chandigarh on 27.5.2003 and deadbody of Suman was handed over to her relatives for performing last rites.

During investigation, complainant Danish got recorded his supplementary statement with ASI Gian Chand, the Investigating Officer that Irfan brother of Guddu had also played a role in killing of Suman since on 15.5.2003, Irfan had gone to house of Guddu at Panchkula where Guddu and Irfan had given beatings to Suman. Irfan was arrested on 8.6.2003, whereas Guddu was arrested on 14.6.2003. After completion of investigation and other formalities, challan against both the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Panchkula.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Panchkula, he supplied copies of documents relied upon in the

challan to both the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 304-B IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Panchkula vide her order dated 18.8.2003 committed the case to the Court of learned Additional Sessions Judge, Panchkula.

Learned Additional Sessions Judge, Panchkula, finding that prima-facie charge for the offences under Sections 498-A and 304-B IPC was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as sixteen witnesses as per details below:

PW1 Zakir having a hut in the neighbourhood of accused on bank of river Ghaggar near the bridge in Panchkula stated that Guddu was residing with his wife Suman and husband and wife were having cordial relations; that on 15th of Baisakh of 2003 when he returned from his work at about 6:00/6:30 P.M., he saw that Suman was lying unconscious on the ground outside her hut and her husband Guddu was giving water to her. He stated that he never saw Guddu beating his wife and Irfan was not at Panchkula on that day and that Irfan came from the village on the next day. He was declared a hostile witness at the instance of the Public Prosecutor and Public Prosecutor was permitted to put questions to him in the form of cross-examination, but lengthy cross-examination by the Public Prosecutor failed to get any reply from his mouth, which might have been favourable to the prosecution.

To the similar effect is the testimony of PW2 Salma, neighbour of Guddu near bridge of village Ghaggar.

PW3 Mange Ram stated that on 15.5.2003, accused Guddu was taking his wife Suman on his shoulders towards Majri Chowk at about 3/3:15 p.m.; that Suman was unconscious at that time. He stated that he had not heard any noise from the hut of the accused and does not know anything except the facts stated by him. He was also declared a hostile witness since he did not toe the line of prosecution.

PW4 Dr.Prateek, Junior Resident, PGI, Chandigarh stated that on 26.5.2003, Suman wife of Guddu was admitted in their hospital with diagnosis of alleged strangulation and died due to raised intracranial tension. He proved various documents in that regard. In his cross-examination, he admitted it as correct that as per his opinion at Point C, he had ruled out homicide and suicide as the cause of death of deceased though he gave an explanation that since the diagnosis was not clear so he could not rule out whether it was homicidal or suicidal death.

PW5 Dr.Mankirat stated that he was not concerned with the treatment of patient in any manner.

PW6 ASI Sunita had recorded the FIR on receipt of ruqa.

PW7 Constable Ram Saran had prepared the scaled site plan of the place of incident as pointed out by complainant Danish.

PW8 Constable Sultan Singh was a formal witness having taken sealed parcel and a sealed envelope to FSL, Madhuban depositing the same there on 6.6.2003.

PW9 HC Suresh Kumar on 26.5.2003 had taken special

report of this case to Illaqa Magistrate, S.P. and D.S.P., Panchkula and delivered the same at their office.

PW10 Inspector Ashok Kumar had filed the challan in the Court on completion of investigation.

PW11 Jaideep is also more or less a formal witness in whose presence certain articles had been taken into possession by the Investigating Officer vide seizure memo.

PW12 Dr.Sri Niwas, Senior Resident, Department of Forensic Medicine, PGI, Chandigarh provided the medical evidence with regard to death of the deceased stating that on 27.5.2003, he had conducted the post-mortem examination on the dead body of Suman wife Guddu; the body was identified by Irfan son of Syaeed Ali, resident of village Machauli, District Unnao, U.P.. He stated that injuries found on the body were an oblique scab(dark brownish) separating abrasion of size 6 cm x 1.5 cm present over left fronto lateral aspect of neck starting 5 cm below the chin in the midline going upwards and laterally up to 4 cm below the left angle of mandible. He stated that in his opinion the cause of death was cerebral damage due to combined effect of blunt force trauma to the head and hypoxaemia as a result of strangulation. All the injuries were ante mortem and probable duration between injuries and death was about ten days and between death and post mortem was 31 hours. He proved copy of post-mortem report.

PW13 Danish complainant deposed in terms of the statement made by him to the police.

PW14 happened to be Dr.Kartar Singh, Director, Sanjay

Gandhi Institute of Medical Science, Lucknow, who was earlier Head of the Department of Gastro enterology, PGI, Chandigarh.

PW15 Dr.Payal Puri, Medical Officer, General Hospital, Sector-6, Panchkula had examined the patient on 15.5.2003 at 8:15 p.m. and on examination found her to be having repeated fits with excessive sweating. The patient was in status apilepticos so she referred the patient to PGI for further neurosurgical opinion at 9:30 p.m. on the same day.

PW16 SI Balwant Rai deposed regarding the investigation conducted by him.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and have been implicated in this case falsely.

In addition to abovesaid pleading of innocence and false implication, accused Guddu further pleaded that he is a resident of village Bacholi (UP) and he was not residing with his brother but he has been residing at Panchkula along with his wife Suman, who died due to Japanese encephalitis; that tried his best to get the best available treatment to her despite that she expired; that he neither ill-treated his wife nor demanded any dowry from his brother-in-law.

Further accused Irfan pleaded that he was resident of village Bacholi (UP) and never resided with his brother Guddu and Suman at Panchkula.

Accused did not lead any evidence in defence.

After hearing arguments, Additional Sessions Judge, Panchkula acquitted accused Irfan, whereas accused Guddu was convicted and sentenced as mentioned supra, which left him aggrieved and he has filed the present appeal.

I 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 I find that the judgment of conviction and sentence passed against accused/appellant Guddu cannot be sustained for the reason that the material witnesses examined by the prosecution have not supported its case set up against appellant/accused Guddu that he had given beatings to Suman as a result of which, she had died.

Even at the cost of repetition, it may be stated that PW1 Zakir having a hut in the neighbourhood of accused did not say anything incriminating against accused/appellant Guddu. Similarly, PW2 Salma and PW3 Mange Ram did not utter a single word, which might have been taken incriminating qua accused Guddu. As regards the testimony of PW13 Danish – complainant, admittedly he is not an eye-witness of the incident and his deposition cannot be taken to be ocular account of the occurrence. The statements of the remaining witnesses are of corroborative type. In absence of enough cogent, convincing, reliable ocular evidence, the corroborative evidence by itself cannot result in coming to the conclusion that the case of the prosecution against the accused stands proved conclusively and affirmatively.

If we see the case from other angle also i.e. with regard to

injury marks found on the neck, head and eye of the deceased though needle of suspicion gets pointed out towards Guddu being husband of deceased to explain as to under what circumstances, she had suffered those injuries and had died but that by itself is not enough to return a finding that charge for offences under Sections 304-B and 498-A IPC stand proved. There is only solitary statement of PW13 Danish with regard to Guddu harassing the deceased in connection with demand of dowry but then those allegations come out to be of general type lacking material particulars. No specific instances in that regard have been given. There is nothing on the file to show that the matter had been reported to the police in that regard on some earlier occasion or any other agency or body like Panchayat, Women Organization etc. have been informed in that regard. In that way, the prosecution had been unsuccessful in its endeavour to prove its charge against the accused Guddu beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and misinterpretation of law wrongly convicted the accused Guddu for the offences under Sections 304-B and 498-A IPC. That wrong needs to be undone by way of acceptance of the appeal.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable. The same are set aside by way of acceptance of this appeal. The appellant is acquitted of the charge framed against them.

Necessary intimation be sent to the quarter concerned.

9.10.2018

Brij

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No

(H.S.MADAAN)
JUDGE