

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-449-DB-2004

Reserved on : 08.07.2019

Date of decision : 10.07.2019

Ramesh Kumar

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Gurcharan Dass, Advocate
for the appellant.

Ms.Shubhra Singh, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 01.04.2004 rendered by the Sessions Judge, Ambala, in Sessions Case no.11 of 09.05.2003 whereby the appellant, who was charged with and tried for offences under Section 302/394 of the Indian Penal Code (in short "IPC"), was convicted thereunder. He was sentenced to undergo imprisonment for life and to pay a fine of Rs.2500/- for offence punishable under Section 302 IPC. He was also sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2500/- for offence punishable under Section 394 IPC. In default of payment of fine, the appellant was ordered to further undergo rigorous imprisonment for a period of six months for each default. The sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that on 11.02.2003

Harish Kumar Kohli (complainant) left his house after breakfast. His wife Suman, who was a teacher in Army School, Ambala Cantt., along with her son Parteek had left for school before that. The complainant's mother Parkash Wati was alone in the house. Hari Ram, who was employed in Mehndiratta Hospital, went to the bank and gave information to the complainant that his mother was unwell. The complainant immediately rushed to his house. He saw that Dr.Mehndiratta was checking his mother. The complainant suspected that his mother had suffered a heart attack as she had suffered heart attack earlier also. The complainant noticed that ring, ear rings and bangles of both hands were missing. The complainant suspected that some unknown person had committed the murder of his mother and robbery of her jewellery. He made his statement Ex.PA to the police. The investigation was initially conducted by ASI Gurdial Singh. He inspected the spot. He prepared rough site plan. Inquest report was prepared. The body was sent for post-mortem examination. Further investigation was conducted by DSP Nripjit Singh. He inserted Section 394 IPC on 14.09.2003. He recorded the statements of Leela Devi and Shiv Kumar on 15.02.2003. He arrested the accused on 16.02.2003. Investigation was completed. The challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. The statement of appellant was also recorded under Section 313 Cr.P.C. He had denied the case of the prosecution. Two witnesses were examined by him in his defence. The appellant was convicted and sentenced as noticed hereinabove.

Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Harish Kumar deposed that he left his house at about 09.45 A.M. on 11.02.2003. He went to the bank. His wife Suman Kohli was teacher in Army School, Ambala Cantt. She had gone to school with her son Partik at about 07.00 A.M. His mother was alone in the house. Her name was Parkash Wati. At about 01.00 P.M., he received a message in the bank from Hari Ram, worker in the Mehndiratta Hospital, Ambala City, that his mother was serious. He immediately came to the house. He saw his mother lying on the floor. Dr.Mehndiratta was examining her. Doctor told him that his mother died. The blood was also present on the spot. He thought that his mother had suffered a heart attack. He noticed that jewellery were missing. He reported the matter to the police. On 16.02.2003 Inspector Naripinder Singh, CIA Staff, Ambala came to his house and told him that the accused had committed the crime. Police came to his house on 18.02.2003. The police took him and his friend Raj Kumar to the house of accused situated on Patel Road, Ambala City. Accused got the gold ornaments recovered from his house. He identified the jewellery. In his cross-examination, he deposed that they were four brothers and two sisters. He used to come back from the bank between 05.00 and 05.30 P.M. He used to come to his house for lunch between 02.00 and 03.00 P.M. His mother was living with him.

Ramesh Kumar accused was frequent visitor to their house. Accused never raised any dispute with his mother in his presence. His mother was absolute owner of the house. Again said he was owner of the house and his mother was owner of the house situated on Patel Road which was sold by her.

8. PW-2 Leela testified that she was working as a domestic servant at the house of Harish Kumar for the last about eight years. On 11.02.2003 she came to the house of Harish Kumar at about 09.00 A.M. Harish Kumar and his mother Parkash Wati were present in the house at that time. At about 09.45 A.M. Harish Kumar left the house. At 10.00 A.M. Ramesh Kumar accused came there. He sat with Parkash Wati and demanded Rs.10,000/- from her. At about 10.30 A.M., she left the house. When she left the house, Parkash Wati and Ramesh Kumar accused were present there. At about 02.30 P.M. she came to know about the death of Parkash Wati. She went to the house of Parkash Wati. Many people had gathered there. Police recorded her statement on 15.02.2003. In her cross-examination, she deposed that the gate of house was lying open when the accused came to the house of Harish Kumar on 11.02.2003. He was empty handed. She did not prepare tea for him. Accused came on foot inside the house. No repair work was going on in the house on the day of occurrence. The bricks were lying in the compound of the house near flower pot. No quarrel of accused took place with the deceased in her presence. Accused and Parkash Wati were talking to each other normally.

9. PW-3 Shiv Kumar deposed that on 11.02.2003 he went to the house of Harish Kumar for supplying milk at about 11.00 A.M. He saw Ramesh Kumar accused coming out of the house of Harish Kumar. The mother of Harish Kumar used to come out to take milk but on that day she

did not come out. He presumed that Parkash Wati might be present in the bathroom. He went away from the house of Harish Kumar. At about 01.00 P.M., he came back to the house of Harish Kumar to give milk. He rang the bell but there was no response. He called the tenants. A lady from the upper storey came down stairs and went inside the house of Harish Kumar. He along with that lady also went inside the room. They saw Parkash Wati lying on the floor of the house. On asking of lady tenant, he called Dr.Mehndiratta from his clinic. He went to the house of Harish Kumar with the doctor. In his cross-examination, he deposed that he used to supply milk at about 09.00 A.M. Harish Kumar had come back to the house in his presence when he went to his house second time. He had stayed at the house of Harish Kumar till 02.30 P.M. Police made enquiries from him. He told the police about the departure of accused from the house of Parkash Wati. He saw the accused going on foot from the house of Parkash Wati.

10. PW-7 Constable Manohar Lal had prepared site plan Ex.PD.

11. PW-8 Jai Parkash deposed that Harish Kumar was his friend. On 10.02.2003 the brother-in-law of his daughter met with an accident. He was got admitted in Mehndiratta Hospital, Ambala City. On next day, i.e. 11.02.2003 between 10.30 and 11.00 A.M. he and Yash Pal came out of the hospital of Dr.Mehndiratta. They were talking to each other while standing in front of the hospital. They saw Ramesh Kumar alias Pappu accused coming out of the house of Harish Kumar. He was upset and went towards Prem Nagar. In his cross-examination, he deposed that he came to know about the death of Parkash Wati around 02.00 P.M. on 11.02.2003. He went there and stayed at the house of Harish Kumar till evening. Police was already present at the house of Harish Kumar when he reached there. Police

was making enquiry from the persons present but no enquiry was made from him on that day. After two days of the occurrence, he had told Harish Kumar that he had seen Ramesh Kumar accused coming out of his house on 11.02.2003. Police met him on 13.02.2003. His statement was recorded on 20.02.2003.

12. PW-9 Bal Krishan deposed that he went to the house of his brother Harish Kumar around 01.30 P.M. Police also came there. Some finger prints were available on the mirror affixed on the almirah. Again said the finger prints were available on the glass of the window adjoining the main gate of the house. The blood removed from the floor was put into a bottle. Accused had made disclosure statement on 16.02.2003 that he had kept concealed a brick used by him for committing the murder near the flower pot inside the house of Harish Kumar. He could get the same recovered. The disclosure statement was Ex.PF. Accused led the police party to the house of Harish Kumar. He got recovered the brick. It was taken into possession vide Ex.PG. The brick was Ex.P7. In his cross-examination, he deposed that no person was present in the office of CIA staff when the accused made disclosure statement. He never heard about any dispute of Ramesh Kumar with Parkash Wati.

13. PW-10 Dr. Devinder Singh conducted the post-mortem examination. He noticed following injuries on the body of the deceased:-

- “1. Through and through cut in right ear lobule 2.2 cm. Sub cutaneous tissues was infiltrated by blood. Clotted blood was present over the wound.*
- 2. Lacerated wound 3 cm in upper part of right ear pinna. Clotted blood was present.*
- 3. Contusion 3 cm x 3 cm on left side of face in front and above the left pinna. The colour was bluish.*

4. *Contusion 4 cm x 2.4 cm in upper part of right shoulder. The colour was bluish.*
5. *Clotted blood was present in both nostrils."*

The cause of death was shock and haemorrhage due to head injury. Injuries were ante mortem in nature and sufficient to cause death in normal course of life. Probable time that elapsed between death and post-mortem was within 12 hours.

14. PW-13 ASI Gurdial Singh deposed that he got a telephonic message in the police post that Parkash Wati was lying dead at her house. He went to the house. Harish Kumar got recorded his statement Ex.PA. He prepared inquest report. He took a sample of blood from the spot which was made into a sealed parcel with seal of 'GS'. In his cross-examination, he deposed that the investigation of the case remained with him from 11.02.2003 to 13.02.2003. About 15 to 20 persons were present at the spot when he reached in the Civil Hospital. Accused was also present there. He admitted that no repair work was going on in the house when he went there.

15. PW-14 DSP Nripjit Singh testified that he recorded the statement of Smt.Leela Devi and Shiv Kumar on 15.02.2003 and supplementary statement of Harish Kumar on 16.02.2003. He interrogated accused. Accused made disclosure statement Ex.PF. Accused got the brick recovered. It was sealed with seal of 'NS'. He prepared rough site plan. Accused made another statement Ex.PM. According to which he had kept concealed the ornaments in an almirah of his house. In his cross-examination, he deposed that he did not notice any construction work going on in that house. He did not have suspicion on the accused before recording the statements of Leela Devi and Shiv Kumar on 15.02.2003. No blood stains were available on the brick at the time of its recovery.

16. DW-1 Surjit Singh deposed that FDR of Rs.20,000/- for a period of one year was issued in the name of Ramesh Chander on 01.01.2003.

17. DW-2 Rajiv Kumar deposed that Ramesh Kumar was his elder brother. The partition of ancestral property of his maternal grand mother Parkash Wati never took place.

18. The finger print examination report is Ex.PQ. According to the opinion recorded in Ex.PQ, photographed chance print on photograph marked I was either smudged or blurred and bears insufficient ridge characteristic details. Hence it is unfit for opinion. Police has also sought opinion of doctor vide application Ex.PL whether the injury could be inflicted by brick blow. Doctor opined that the possibility could not be ruled out about the injury with the sealed brick.

19. PW-1 Harish Kumar has deposed that he was informed by Hari Ram that his mother was serious. He came back to the home. Dr.Mehndiratta was examining his mother. In his cross-examination, he deposed that accused was frequent visitor to his house. Accused never raised any dispute with his mother in his presence.

20. According to PW-2 Leela, accused had entered the house. He was talking with the deceased. He demanded Rs.10,000/- from her. She left the house at 10.30 A.M. At about 02.30 P.M. she came to know about the death of Parkash Wati. She came back to the house of Parkash Wati. In her cross-examination, she deposed that police enquired from her on the night of 11.02.2003. She had told the police about the arrival of accused to the house of Parkash Wati.

21. PW-3 Shiv Kumar deposed that on 11.02.2003 he came to the

house of Harish Kumar to supply the milk at about 11.00 A.M. There was no response from the house. He came back at 01.00 P.M. He rang bell. There was no response. He went inside the house. He saw the body of Parkash Wati lying on the floor. In his cross-examination, he deposed that police made enquiries from him and he told the police about departure of accused from the house of Parkash Wati. He saw accused going on foot from the house of Parkash Wati.

22. PW-8 Jai Parkash deposed that he saw accused coming out of the house of Harish Kumar. In his cross-examination, he deposed that he came to know about the death of Parkash Wati around 02.00 P.M. on 11.02.2003. He reached the house. Police was making enquiries from the persons present. However, no enquiry was made from him. After two days of the occurrence he told Harish Kumar that he had seen accused Ramesh Kumar coming out of his house on 11.02.2003. His statement was recorded on 20.02.2003.

23. PW-14 DSP Nripjit Singh recorded the statements of PW-2 Leela, PW-3 Shiv Kumar and supplementary statement of PW-1 Harish Kumar on 15.02.2003.

24. The incident had happened on 11.02.2003. PW-2 Leela and PW-3 Shiv Kumar had remained silent for four days. Their statements were recorded by the police on 15.02.2003. PW-2 Leela stated that police had made enquiries from her on the night of 11.02.2003. PW-8 Jai Paraksh should have told to his friend Harish Kumar on the same day when he had seen the accused coming out of the house of Harish Kumar instead of after two days of occurrence. His statement was recorded on 20.02.2003. The motive attributed to the accused is that he demanded Rs.10,000/- and he was

also demanding share in the house. PW-1 Harish Kumar has admitted in his cross-examination that accused never raised any dispute with his mother in his presence. In case PW-2 Leela and PW-3 Shiv Kumar saw the accused leaving the house, they should have immediately told this fact to PW-1 Harish Kumar or to the police. Similarly PW-8 Jai Parkash was supposed to bring in the notice of PW-1 Harish Kumar that he had seen the accused leaving his house on 11.02.2003. PW-9 Bal Krishan has deposed in his cross-examination that he had not seen any blood stains on the brick. No repair work was going on in the house on the day of occurrence. He never heard about any dispute of Ramesh Kumar accused with Parkash Wati. The brick was not sent for chemical examination. PW-14 DSP Nripjit Singh has admitted that there was no blood stain on the brick at the time of recovery and no construction work was going on in the house. According to PW-10 Dr. Devinder Singh, partial rigor mortis was present in lower limb to moderate post mortem staining on back. The prosecution has failed to prove motive attributed to the accused since PW-1 Harish Kumar has categorically deposed that accused had never raised any dispute qua the property with the deceased. PW-9 Bal Krishan is brother of PW-1 Harish Kumar. He had also not heard about any dispute of Ramesh Kumar accused with Parkash Wati. The case of prosecution is that accused was demanding Rs.10,000/- for the simple reason that he had to make FDR of Rs.10,000/-. However, FDR of Rs.20,000/- was already issued in the name of accused, as per statement of DW-1 Surjit Singh. DW-2 Rajiv Kumar has also deposed that partition of ancestral property of his maternal grand mother Parkash Wati has never taken place.

25. The prosecution has failed to prove the case against the accused

beyond reasonable doubt. Accordingly the appeal is allowed and the judgment and order dated 01.04.2004 are set aside. The appellant is on bail. His bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 10, 2019.
Davinder Kumar

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