

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRA-D-212-DB-2016(O&M)
Date of Decision : 19.8.2019

Raj Kumar

..... Appellant

Versus

Union Territory Chandigarh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GIL

Present : Mr.Ramesh Sharma, Advocate
for the applicant-appellant.

Mr. Yashwant Singh Rathore, Addl. Public Prosecutor,
U.T. Chandigarh.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the judgment and conviction order dated 13.2.2015 and 16.2.2015 respectively passed by the Sessions Judge, Chandigarh whereby the appellant was convicted and sentenced to undergo life imprisonment and a fine of Rs. 20,000/- under Section 302 IPC in case FIR No. 229 of 4.6.2014. P.S. Mani Majra, Chandigarh.

2. As per the allegations, on 4.6.2014, ASI Gurmeet Singh received a wireless message with regard to an attack on a woman at H.

No. 2737, Mauli Complex, Chanidgarh. When he reached there, he learnt

that police control room vehicle had already carried the victim to the hospital. Over there, he met with the complainant (father of the victim) who handed over him a complaint alleging that the victim was his daughter who had solemnized love marriage with the appellant about 8 years ago and they had two children. About 20 days ago, the appellant had beaten his daughter and since then she alongwith her children was staying with him in his house (which was situated at the distance of 50 Yards from the house of the appellant). On the day of occurrence, at about 8:15 p.m someone from the locality came to his house and informed him that there was an altercation between his daughter and son-in-law and that his son-in-law (the appellant) was dragging his daughter towards his own house. The complainant went there and saw that the appellant was inflicting knife blows on his daughter. On seeing him, the appellant escaped. In the meantime, the police vehicle came and took his daughter to the hospital where she was declared brought dead. The appellant was charged with murder. The prosecution has examined as many as 13 witness. There was only one material witness viz. the father of the girl (PW-1). In the examination-in-chief he stated that he was present at home, when the appellant came and forcibly took his daughter alongwith him. He followed them and then witnessed the murder. However, in his cross examination he again reverted to the original version of the FIR and stated that in fact somebody had informed him and then he had gone to the house of the appellant and saw the murder. It is apposite to mention here that there was no other witness of this crime produced by the prosecution.

3. The other evidence which appeared against the appellant is

as follows :-

1. Paras Nath, who appeared as PW2, stated that he rented out the second floor of his house to the appellant and that the appellant used to quarrel with his wife.
 2. Dr. Venu Bhargava, Junior Resident, Department of General Surgery, PGI Chandigarh, testified the death of a female who was declared brought dead on 4.6.2014.
 3. Dr. Satyam Tyagi, Emergency Medical Officer, Government Multi Specialty Hospital, Sector 16, Chandigarh, who conducted post-mortem examination of the deceased along with Dr. Himmat Mohan Singh Ghuman, opined the cause of death as shock and hemorrhage due to multiple injuries which was sufficient to cause death in the ordinary course of nature.
 4. HC Vinod Kumar (PW5) proved the negatives and photographs thereof clicked by him at the spot.
 5. HC Satnam Singh (PW6) who was a member of Mobile Forensic Team, proved the factum of recovery of knife, one towel and one ear ring having blood stains from the spot.
 6. HC Yash Pal (PW8) proved the scaled plan Ex.P36.
4. On the basis of these facts, learned counsel for the appellant has argued that actually the complainant was not present at the spot because otherwise he would not have given one version in his examination-in-chief and a different version in his cross examination.
- Moreover, as per the learned counsel for the appellant it is extremely

strange that the complainant saw the murder but did not raise a 'raula' and allowed the appellant to escape. Even more strangely, the complainant did not even accompany his critically injured/dead daughter to the hospital. As per him, this is a case where the deceased was murdered by some unknown persons and the appellant has been roped in only because of suspicion but actually there is no evidence to connect him with the crime. He has further argued that once the testimony of the complainant is discarded even the presence of the appellant is not established and therefore, prays that the appellant be acquitted.

5. Learned Public Prosecutor appearing for UT Chandigarh is not in a position to deny that there is no other evidence of crime; that the narration of the complainant is materially different in the examination-in-chief and in the cross examination; that it cannot be taken to be normal that the complainant would not at least try and prevent the appellant from escaping if not physically then it least by raising 'raula'; that likewise the fact that the complainant did not accompany his daughter to the hospital is also not a normal fact. He has however, stressed on the conduct of the appellant. As per him, if the murder had been committed by some other persons the appellant would have been the natural complainant but he went into hiding. When he was arrested after two days, there were blood stains on the shirt and those matched with the blood group of the deceased. He has further sought to invoke Section 106 of the Evidence Act, 1872 and has urged that once the death took place in the matrimonial home, the circumstances would have to be explained by the appellant. To these arguments, learned counsel for the appellant has argued that once the testimony of the complainant is discarded the mere fact that the blood

group on the shirt of the appellant matches that of his wife cannot lead to the conclusion that he killed her and the invocation of Section 106 of the Evidence Act, 1872 is misplaced because once the testimony of the complainant is discarded even the presence of the appellant at the spot is not established and once that is so, it cannot be said that this is a fact of which the appellant had special knowledge.

6. It cannot be lost sight of that as per the complainant, his daughter had been residing with him for the past about three weeks. If that is so, and the presence of the appellant is not established at the spot, Section 106 of the Evidence Act is wholly inapplicable. Reliance has been placed upon the judgments of Supreme Court passed in the matters of *Shambhu Nath Mehra vs. State of Ajmer* reported as 1956 AIR (SC) 404, *Sudru vs. The State of Chattisgarh* passed in CRA-751-2010 decided on 22.8.2019 and *Trimukh Maroti Kirkan versus State of Maharashtra* reported as (2006) 10 SCC 681.

7. We find ourselves in agreement with the arguments of the learned counsel for the appellant. The vacillating testimony of the sole eye witness is not credible. It is very hard to believe that a man who is witnessing the murder of his daughter would not try to prevent the assailant from escaping or would not try and call for help. Had he been there at the spot, he would have normally accompanied his daughter to the hospital. The case now has to be decided on the basis of circumstantial evidence and the circumstances which appear against the appellant are :-

1. He was married to the deceased.

2. His shirt was stained with blood which is of the same blood group as the deceased.

3. He went into hiding after the murder.

8. In our considered opinion, these circumstances do not provide a complete chain, each link of which point to the guilt of the appellant.

9. Consequently, the appeal stands allowed and we set aside the impugned orders dated 13.2.2015 and 16.2.2015. The appellant is directed to be set free. The bail bonds produced by the appellant, if any, shall stand cancelled/discharged.

10. Since the main case has been decided, the pending C.M., if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

19.8.2019
anuradha

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