

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

CRA-D-427-DB of 2003

Reserved on : 25.01.2019

Date of decision : 29.01.2019

Roshan Lal

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Ms. Sarabjit Kaur, Advocate, Legal Aid Counsel,
for the appellant.

Mr. S.P.S.Tinna, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment and order dated 26.03.2003, rendered by learned Additional Sessions Judge (Adhoc), Fast Track Court, Patiala, in Sessions Case No. 31 of 23.08.2002/81T of 10.02.2003, whereby the appellant, who was charged with and tried for the offences punishable under Sections 302/201 IPC, was convicted and sentenced to undergo imprisonment for life and to pay fine of Rs. 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one year, for the offence under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for three years and to pay

fine of Rs. 500/- and in default of payment of fine, to further undergo rigorous imprisonment for six months, for the offence under Section 201 IPC. Both the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that one Faquir Chand son of Khilla Ram, resident of Dhabhi Gujran, had lodged report before ASI Harvel Singh on 04.05.2002 to the effect that his wife Roshni Devi was Sarpanch of the village. He was present in his house. He came to know that Roshan Lal son of Ram Sarup had brought one lady, namely Chanda, from Bombay about a month back. Roshan Lal used to proclaim Chanda to be his wife. Chanda was kept by Roshan Lal with his mother in a house. There was whispering in the village that Roshan Lal had murdered Chanda during night. Roshan Lal was vagabond. Roshan Lal be arrested and action be taken against him. The statement is Ex.PD. Thereafter, FIR Ex.PD/3 was recorded. ASI Harvel Singh arrested Roshan Lal near Main Bus Stand of village Dhabhi Gujran. Nirmal Singh, Naib Tehsildar, Patran, was summoned at the spot. Accused was interrogated in the presence of Nirmal Singh, Naib Tehsildar, one Satpal and complainant Faquir Chand. The accused suffered disclosure statement Ex.PE that he had kept concealed and buried the dead body of Chanda after digging ditch in a room of his residential house. Spot was visited. Body was dug out. It was sent for post-mortem examination. The post-mortem report is Ex.PJ/1. Investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution has examined as many as five witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. According to him, he was falsely implicated. He was convicted and sentenced, as noticed above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case against the appellant beyond reasonable doubt and supported the judgment of the learned Court below.

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

6. PW.4 Faquir Chand is the material witness. He deposed that his wife's name is Roshni Devi. She was Sarpanch of the village. He knew Roshan Lal. Roshan Lal brought a woman, namely Chanda, from Bombay. He kept her with him for about one month. About 10-11 months back, he heard in the village that Roshan Lal had murdered Chanda. Roshan Lal was *Awara* (vagabond type of man). He informed the police. The police recorded his statement Ex.PD. He signed the same. The accused was arrested. He was interrogated in his presence, and in the presence of Satpal Panch, Nirmal Singh Naib Tehsildar and other police officials. Naib Tehsildar was called through telephone. The accused made a disclosure statement that he had kept concealed the dead body of Chanda in his room. The disclosure statement is Ex.PE. In his cross-examination, he deposed that the accused was arrested by the police at his house. There was *raula* (rumour) in the village that the accused had murdered his wife. He came to know about it at 9.00 AM.

7. PW.5 Harvel Singh had recorded statement Ex.PD. He reached the spot. The accused was arrested near main Bus Stand of village Dhabhi Gujran. Sh. Nirmal Singh, Naib Tehsildar, was summoned. The accused was interrogated. He made a disclosure statement. He disclosed that he had

brought one lady from Bombay. He had murdered her with *Ghotna*. Thereafter, the accused took the police party to the disclosed place. The earth was removed. Body was recovered. It was identified by Faquir Chand and Satpal. Photographs were taken. He prepared inquest report Ex.PK. Challan was put up after completing all the codal formalities. In his cross-examination, he admitted that mother of the accused was residing with the accused. He did not record her statement. Statements of the neighbours were also not recorded.

8. Nirmal Singh, Naib Tehsildar, was given up. Satpal was not examined. The prosecution has not examined the doctor, who had conducted the post-mortem examination. According to the post-mortem report, the cause of death was head injury leading to sub dural haemorrhage and shock, which was sufficient to cause death in ordinary course of nature. The injuries were ante-mortem in nature. It was necessary for the prosecution to examine the doctor to prove the post-mortem report. The case of the prosecution is also that PW.4 Faquir Chand lodged the report, after hearing rumour in the village that the accused had killed his wife. It has not been disclosed as to who told him about the death of Chanda. According to him, the accused was arrested in his house. According to PW.5 Harvel Singh, the accused was arrested near Bus Stand of village Dhabhi Gujran. The accused had made disclosure statement. It is not voluntary in nature. It was suffered during the course of interrogation. The case of the prosecution is that the Nirmal Singh, Naib Tehsildar, was summoned on the spot, in whose presence the disclosure statement Ex.PE was made. Nirmal Singh has not been examined. According to PW.4 Faquir Chand, telephone message was sent to Nirmal Singh on the spot. However, PW.5 Harvel Singh deposed

that a Constable had gone to bring him. The police has not recorded statement of the mother of the accused, who was in the house. Statements of the neighbours were also not recorded by PW.5 Harvel Singh.

9. The non-examination of Dr. Parshant Gautam is fatal to the prosecution case, coupled with the contradictions noted here-in-above in the deposition of PW.4 Faquir Chand and PW.5 Harvel Singh. Nirmal Singh and Dr. Parshant Gautam were the material witnesses.

10. The prosecution has failed to prove its case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The judgment and order dated 26.03.2003 are set aside. The appellant is acquitted of the charge framed against him, by giving him benefit of doubt. The appellant is on bail. His bail and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

January 29, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No