

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

CRA-D-871-DB of 2016 (O&M)

Reserved on : 21.08.2019

Date of decision : 03.09.2019

Dev Saran

.... Appellant

Versus

State of Haryana

..... Respondent

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

Present: Ms. Shalini Atri, Advocate,
for the appellant.

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

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RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 06.09.2016 and order dated 08.09.2016, rendered by learned Sessions Judge, Hisar, in Sessions Case No. 89 of 2014, whereby appellant Dev Saran, who was charged with and tried for the offence punishable under Section 302 IPC, was convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of ₹ 5,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. The case of the prosecution, in a nutshell, is that on 26.11.2013, telephonic information was received in Police Station Sadar Hansi from Sandeep son of Hari Singh Yadav, resident of village Dhamana to the effect

that a labourer, namely Dev Saran, who was working on Ashwani Brick Kiln, murdered his wife. On this, SI Jaipal Singh reached at the spot. Complainant Jagjit got recorded his statement to the effect that he was an agriculturist. His sister Sumaina, aged about 22 years, was married to Dev Saran. She was working with her husband Dev Saran at a brick kiln. They were residing in a hut at brick kiln. His another sister Sunita was working at a brick kiln at Narnaund with her husband Dev Kumar. On 26.11.2013 at about 6.00 AM, complainant's brother-in-law Dev Saran called him telephonically informing him that his sister Sumaina was not feeling well. He reached at Ashwani Brick Kiln. He saw that his sister Sumaina was lying dead on a cot. He noticed bluish marks on her neck. According to him, his sister was murdered by Dev Saran by strangulating her. The motive was that his brother-in-law Dev Saran used to quarrel with his sister Sumaina on petty matters. The investigation commenced. Body was sent for post mortem examination. *Parna* (piece of cloth) was recovered. It was sent to FSL, Madhuban. Investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The appellant was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was innocent. He took the plea of alibi and examined two witnesses.

4. The appellant was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against

his client. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

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

7. PW.1 Jagjit deposed that he received a telephone call from his brother-in-law Dev Saran at about 6.00 AM to the effect that his sister Sumaina was not feeling well. He went to Ashwani Brick Kiln at village Dhamana. His sister Sumaina was lying on cot. He removed the quilt. His sister was dead. He noticed ligature mark of blue colour on her neck. The motive was that his brother-in-law Dev Saran used to quarrel with his sister Sumaina. His brother-in-law Dev Saran had picked up a quarrel with Sumaina on the last night. Police came on the spot. The police recorded his statement Ex.P1. In his cross-examination, he deposed that immediately after receipt of telephonic message, he left for Dhamana in a jeep. He reached Dhamana at about 7.00 AM. His sister was lying dead on a cot. 50 persons had assembled on the spot. He denied the suggestion that he had demanded dowry from Dev Saran.

8. PW.2 Sipahi Lal testified that at about 6.00 AM, he received information from Jagjit through mobile phone that his sister-in-law who was married with Dev Saran, was murdered by Dev Saran. They proceeded for brick kiln at Dhamana. He saw that Sumaina was lying on a cot. Her body was covered with quilt. He removed the quilt. He noticed ligature mark of blue colour on her neck. Motive of murder was that Dev Saran had quarreled with Sumaina many times. In his cross-examination, he deposed that there were about 4-6 persons near the dead body. He had also seen a

ligature mark of blue colour on the neck of Sumaina. He admitted that he had not seen any body killing Sumaina.

9. PW.3 Dr. Anjuli Aggarwal led her evidence by filing affidavit Ex.PW.3/A. She along with Dr. Deepa Sardana conducted the post mortem examination on the body of Sumaina. According to their opinion, the cause of death was asphyxia caused by strangulation, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. According to her, the possibility of causing death with *parna* by strangulation could not be ruled out. The *parna* is Ex.P7. She was re-called for further examination. She deposed that on 04.04.2014, on police application Ex.P15, she and Dr. Deepa Sardana had given opinion Ex.P16 after opening the sealed parcel of *parna* Ex.P7 that possibility of strangulation with the said *parna* could not be ruled out.

10. PW.5 Satender prepared scaled site plan Ex.P10.

11. PW.7 Head Constable Kamal Singh testified that accused Dev Saran made disclosure statement Ex.P13, on the basis of which *parna* was got recovered. In his cross-examination, he deposed that 7-8 huts were constructed near the hut of the accused. It was an open place and accessible to all.

12. PW.10 Sub Inspect Jaipal Singh deposed that he reached the spot on 26.11.2013. He recorded the statement of complainant Jagjit vide Ex.P1. The photographs of the dead body of Sumaina are Ex.P19 to Ex.P22. He prepared rough site plan Ex.P23. Accused made disclosure statement Ex.P13, on the basis of which *parna* was got recovered. In his cross-examination, he deposed that *parna* was lying under the bedding.

13. DW.1 Urmila deposed that she, her husband and her brother Dev Saran were working at Ashwani Brick Kiln, Hansi. Her hut was adjoining the hut of her brother Dev Saran. They all used to work at the brick kiln from 8.00 AM to 5.00 PM. On 26.11.2013, she along with her husband and brother Dev Saran were on their work of making bricks. They received information at about 2.30/3.00 PM that Sumaina wife of her brother Dev Saran was lying dead in the hut. They went to the hut of Dev Saran and saw that Sumaina was lying dead on the cot. Her brother Dev Saran called his brother-in-law Jagjit. Jagjit and 2-3 other persons came at the spot at about 5.00 PM. Police reached at the spot at about 6.00 PM. In her cross-examination, she deposed that children of a neighbourer had informed them about the death of Sumaina. She did not remember the names of children as well as their parents. She did not notice any ligature mark on the neck of Sumaina.

14. DW.2 Sandeep Kumar is proprietor of Ashwani Brick Kiln. According to him, record of labourers working in the brick kiln for the year 2012 to 2014 was not available with them. Same was taken into possession by the Labour Department officials. Accused Dev Saran, his wife Sumaina (deceased), his sister Urmila and her husband were working in his brick kiln. The duty hours were from 7.00/8.00 AM to 5.00/6.00 PM with lunch breaks between 1.00/3.00 PM. On 26.11.2013, accused Dev Saran had gone to make bricks at the specified place and was present at that place.

15. The dead body of Sumaina was recovered from the hut of the appellant. He has not explained the circumstances how she died in his hut. It is a fit case, where Section 106 of the Evidence Act would be attracted.

PW.1 Jagjit is brother of the deceased. According to him, appellant used to quarrel with his wife Sumaina. PW.1 Jagjit was informed by the appellant that his sister Sumaina was unwell. He reached at the spot and noticed bluish marks on the neck of the deceased. PW.2 Sipahi Lal had also seen ligature mark of blue colour on the neck of the deceased. The cause of death was asphyxia caused by strangulation. *Parna* was got recovered on the basis of disclosure statement made by the appellant.

16. The appellant has taken the plea of alibi on the basis of statements of DW.1 Urmila and DW.2 Sandeep Kumar. However, he has not proved the same. According to DW.1 Urmila, they received information in the after-noon through children that Sumaina was lying dead in the hut. She neither knew the names of the children nor the names of their parents. According to DW.2 Sandeep Kumar, the appellant was working in his brick kiln, but he has not produced the attendance register on the pretext that record was seized by the Labour Department.

17. Accordingly, the prosecution has proved its case against the appellant beyond reasonable doubt. There is no merit in this appeal and same is dismissed. The impugned judgment and order are upheld.

(RAJIV SHARMA)
JUDGE

September 03, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No