

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-429-DB-2003
Date of decision: 19.11.2019

Sheetal Dass and another
...Appellants

Versus

State of Haryana
...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr.H.S. Jalal, Legal Aid Counsel and
Mr.RK Bagga, Advocate for the appellants

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 10.2.2003 passed by the Court of learned Sessions Judge, Ambala vide which accused Sheetal Dass and Sandeep were convicted and sentenced as under:-

<i>Under Sections</i>	<i>Punishment</i>
302 IPC	to undergo life imprisonment and to pay fine of Rs.1000/-each
364 IPC	To undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1000 /-each
307 IPC	To undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1000 /-each

In case of default of payment of fine, each of the accused was

ordered to undergo further rigorous imprisonment for a period of six months for every default of fine. The substantive sentences awarded under Sections 364 and 307 IPC were to run concurrently with the sentence awarded under Section 302 IPC.

2. Shorn of all unnecessary details, the prosecution case is that on 4.12.1999 Kura Ram son of Tika Ram, resident of Bahlolpur, P.S. Kharar came present in the police station and made his statement that his cousin Sham Singh and his wife Vinod Kumari alongwith Tilak Raj @ Tinku, son of Vinod Kumari's sister were living in his farm house at Nagoli. A telephonic message was received by him from Police Station Nanota regarding illness of Tilak Raj @ Tinku. He alongwith Dr.Gurdip Singh, Surjit singh, Nazir and Munga Ram alongwith some other villagers went to the farm house of Sham Singh, situated at Nagoli, where Sham Singh and his wife Vinod Kumari were found dead in the kitchen. On the basis of his statement FIR Ex.PEE under Sections 302 and 452 IPC was registered at Police Station Naraingarh. The police went to the spot and inspected the dead bodies. The blood coming out of the mouth of Sham Singh was taken on cotton swabs which were made into sealed parcels and taken into possession vide recovery memo Ex.PAA and Ex.PBB. A live cartridge Ex.P.3 was found lying at the spot, which was taken into possession. After inquest proceedings, the dead bodies were sent to the hospital for post mortem examination. During investigation, statement of Tilak Raj @ Tinku was recorded, wherein he stated that on the intervening night of 2/3.12.1999 at about 8 p.m. Sheetal Dass, Guruji and Sandeep Kumar, come to their

house. They used to visit their house earlier also. At about 11 p.m. Guruji distributed the parsad of Laddu. In the morning at about 5 a.m. Guruji told him that his uncle had suffered an electric shock and his aunt took him to hospital in a jeep. They enticed him and asked him to take the money if any with him and thereafter, took him to village Nanota. He was asked to write some letters to his father to save him. He was asked to write the dates on the letters 15, 23 and 26 respectively. One letter was procured from him without date. Thereafter, Sheetal Dass and Sandeep Kumar tried to kill him in the fields. Tilak Raj @ Tinku was brought to the hospital of Nukkar village, where he became conscious. On the basis of his statement, Sections 364, 307 and 404 read with Section 34 IPC were added. Statements of the witnesses were recorded and accused Sheetal Dass and Sandeep Kumar were arrested on 7.12.1999. On their disclosure statements, recovery of *chunni* of yellow colour containing blood stains was effected from the possession of accused Sheetal Dass and an axe was recovered from the possession of accused Sandeep Kumar. Thereafter, the matter was investigated by CIA Staff, Ambala. After completion of investigation,, report under Section 173 Cr.P.C. was prepared and filed in the Court.

3. Charges under Sections 302, 364, 307 read with Sections 34 and 404 IPC were framed against the both the accused to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as 22 witnesses, namely, Dr. Wajinder Singh as PW1, UGC Nafe Singh as PW2, Sant Ram Patwari as PW3, Dr.S.K.Singal as PW4, MHC

Dalel Singh as PW5, Constable Ashok Kumar as PW6, Subhash Chander Photographer as PW7, Ganga Bhushan as PW8, HC Raj Kumar as PW9, HC Dilbagh Singh as PW10, Buti Nath photographer as PW11, Ram Pal as PW12, HC Kulwant Singh as PW13, ASI Gurcharan Singh as PW14, HC Bhim Singh as PW15, SI Sadhu Ram as PW16, Kura Singh as PW17, Tilak Raj as PW18, SI Gurdial Singh as PW19, Inspector Hari Ram as PW20 and SI Shamshad Ali as PW 21 and Mr.Virender Parshad, Judicial Magistrate as PW22.

5. Thereafter, the accused were examined under Section 313 Cr.P.C., all the incriminating circumstances appearing in evidence against them in the prosecution evidence were put, to which they denied and claimed innocence. In defence, they examined Constable Ranjit Singh as DW1, Jai Kumar as DW2 and Parkash Chand as DW3.

6. After hearing learned counsel for both the parties, learned trial Court convicted and sentenced the accused-appellants for the offences and term as indicated at the outset in para 1 hereinabove.

7. Feeling dissatisfied with the judgment and order, the appellants have filed the present appeal.

8. Learned counsel for the appellants state that in the absence of any motive, it is unsafe to place reliance on the circumstantial evidence adduced by the prosecution; more so particularly when the said evidence is replete with discrepancies, omissions and improvements. The statement of star witness PW18 Tilak Raj, recorded two days after the occurrence, is highly doubtful in the absence of Daily Diary Report of Police Station

Nanota with regard to the movement of SI Gurdial Singh. It is further submitted that both the accused were acquaintance of deceased, Sham Singh and were also known to PW18 Tilak Raj. Despite that, Tilak Raj did not disclose the names of both the accused in his statement recorded on 3.12.1999 by SI Shamshad Ali, PS Nanota. He also did not disclose this fact to his parents on 4.12.1999 when they were informed about the incident on telephone by SI Shamshad Ali, in his presence. The motive behind the alleged crime has also not been proved by the prosecution. The alleged recovery of ornaments was not effected in the presence of the independent witness. The extrajudicial confession made before PW12 Ram Pal cannot be made the basis to hold the appellants guilty because the accused had no reason to confess their crime before PW12 Ram Pal and Mewa Singh, who were not earlier known to them. Lastly, it is contended that at the most it is a case of Sections 364 and 307 read with Section 34 IPC and not 302 IPC.

9. On the other hand, learned State counsel submits that the prosecution case is well established and the learned trial Court has rightly convicted and sentenced the accused.

10. We have heard the learned counsel for the parties and have perused the record with their able assistance.

11. As per record, accused Sheetal Dass and Sandeep Kumar used to visit the house of the deceased. Appellant Sandeep Kumar in his statement under Section 313 Cr.P.C. denied that he ever visited the house of Sham Singh. However, in his statement under Section 313 Cr.P.C. appellant Sheetal Dass has stated that Sham Singh used to come to Ramdeva Temple

in UP, where he was working as Pujari and he used to visit the house of Sham Singh occasionally.

12. PW18, Tilak Raj son of Mangu Ram, nephew of deceased, Vinod Kumari (sister's son) has stated that on 2.12.1999 at about 8 p.m. our Guru Sheetal Dass accompanied by one Sandeep came at their house and they sat together till 11 p.m. Sandeep gave '*parshad*' to his uncle and aunt. Thereafter in the morning at about 4.45 a.m. Sheetal Dass woke up and told him that his uncle had suffered electric shock and had been taken away to Ponta Sahib by his aunt. Thereafter, after locking the room, they took him to Nanota town by exchanging the vehicles, where the accused persons inflicted injuries to him and fled away after leaving him in unconscious state.

13. PW1 Dr. Vajinder Singh, Primary Health Centre, Nantaoa, District Saharanpur (U.P.) conducted the medico legal examination of Tilak Raj and found the following injuries:-

- “i) Red abrasion 9 cm x 7 cm in front of throat.
- ii) Red abrasion 3 cm x 1 cm at left side mandible, 3 cm posterior to chin.
- iii) Complained of pain on left side of abdomen, but there was no sign of injury.
- iv) Complained of palpitation.

14. PW4 Dr. SK Singal, Civil Hospital, Naraingarh had conducted post mortem examination on the dead body of Vinod Kumari and found the following injuries on her person:-

- “1) Ligature mark brownish black in colour, encircling the neck at the level of thyroid cartilage varying in width

from 3 cm on front and 2 cm on back of neck. Contusion brownish black in colour was present on under surface of chin in continuation with the ligature mark. On dissection, base of ligature mark was dry, hard and parchment light with extra vasation of blood in surrounding subcutaneous tissues.”

The said doctor had also conducted the postmortem on the dead body of Sham Singh and found the following injuries:-

“1.) Ligature mark, brownish black in colour, all around the neck below the level of thyroid cartilage, wearing from 2-3 cms in width. Also present was a contusion of 3-5 cm x 2.5 cm on left of nape of neck. On dissection, base of ligature mark was pale, with Ecchymosed margins. It was dry and hard. Corner of thyroid bone was fractured. dry, hard and parchment light with extra vasation of blood in surrounding subcutaneous tissues.

2.) An abrasion with clotted blood 2.5 cm x 5 cm in size on front of left shoulder.”

The cause of death in both the deaths was opined to be asphyxia as a result of strangulation.

15. From the above, it is established that the accused persons were present on the day of murder of the deceased. There was no other person available in the house except the accused persons and there is nothing on record to show that there was any enmity of anyone with the deceased. There is no explanation when and why the accused left the house i.e place of occurrence, where the dead bodies were lying and that too without any intimation. It is also proved on record that the accused were very much present at the place of occurrence on the day of occurrence as finger prints

found on the articles recovered from the house of the deceased, matched with the finger prints of the accused person, as is evident from the FSL report Ex.PQQ dated 18.4.2000 prepared by Director, Finger Print Bureau, Haryana, Madhuban.

16. Moreover, the recovery of veil (*chunni*) at the instance of Sheetal Dass vide recovery memo Ex.PQ connects him with the crime. The veil was smeared with blood. The recovery has been substantiated by PW13 HC Kulwant Singh. The medical evidence is in sink with the ocular evidence and goes a long way to prove that the death of the couple has been caused with the scarf got recovered by the accused in pursuance of the disclosure statement Ex.PQ and PR made by them. Not only that another important circumstance appearing against the accused is the statement of Ram Pal PW12 before whom both the accused made extra judicial confession. There is no reason to disbelieve the statement of PW12 Ram Pal. The last seen evidence propounded by injured Tilak Raj, who is injured witness in this case proves another incriminating circumstance against the accused.

17. Hon'ble the Supreme Court in case ***G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027*** has held as under:

“22. The evidence tendered in a court of law is either direct or circumstantial. Evidence is said to be direct if it consists of an eyewitness account of the facts in issue in a criminal case. On the other hand, circumstantial evidence is evidence of relevant facts from which, one can, by process of intuitive reasoning, infer about the

existence of facts in issue or factum probandum. In dealing with circumstantial evidence there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is not derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that “men may tell lies, but circumstances do not”.

23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the

common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.”

18. On examination and analysing the facts and circumstances of the case, we find that the case against the appellants is fully established beyond reasonable doubt and there is no escape from the conclusion that within all human probabilities, the appellants committed the crime.

19. We also feel that in a case wherein evidence is insufficient to establish the motive for murder even then if the prosecution is able to establish beyond all reasonable doubt from other circumstantial evidence that it is the accused (including the appellants) alone who could have committed the murder, the absence of the motive will not hamper a safe conviction.

20. In the instant case, on a close scrutiny of the various pieces of evidence brought by the prosecution on record which form a complete chain, we find that they unerringly point towards the irresistible conclusion of guilt of the accused. The circumstantial evidence points indubitably to the conclusion that it were the accused and the accused alone, who were the perpetrators of the crime. Such evidence was incompatible with the innocence of the accused.

21. We do not find any infirmity in the judgment passed by the learned trial Court, while convicting and sentencing the appellants. The appeal is devoid of any merit and is hereby dismissed.

[JITENDRA CHAUHAN]
JUDGE

[H.S. MADAAN]
JUDGE

19.11.2019
gsv

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