

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

CRA-D-386-DB of 2009

Reserved on : 04.03.2020

Date of decision : 06.03.2020

Sunil and another

.... Appellants

Versus

State (U.T. Chandigarh)

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Salil Bali, Advocate,
for the appellants.

Mr. J.S. Toor, A.P.P., U.T. Chandigarh.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 22.01.2009 and order dated 24.01.2009, rendered by learned Additional Sessions Judge, Chandigarh, in Sessions Case No. 73 dated 12.11.2008, whereby appellants Sunil and Jaswant Singh, who were charged with and tried for the offences punishable under Sections 302/201/34 of the Indian Penal Code (for short 'IPC'), were convicted and sentenced to undergo life imprisonment and to pay a fine of ₹ 10,000/- (Rupees Ten Thousand) each, and in default of payment of fine to further undergo rigorous imprisonment for a period of one year under Section 302/34 IPC. They were further convicted and

sentenced to undergo rigorous imprisonment for a period of three years each and to pay a fine of ₹ 5,000/- (Rupees Five Thousand) each, and in default of payment of fine to further undergo rigorous imprisonment for a period of six months under Section 201/34 IPC. Both the substantive sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that SHO, Police Station Sector 36, Chandigarh, received a wireless message on 20.07.2008 at 11.25 AM to the effect that dead body of a woman was lying near jungle of Mazdoor Colony, village Kajheri. SHO along with ASI Jagdish Chander and other police officials reached the spot. Shiv Kumar gave information to Inspector Devinder Sharma vide statement Ex.P5 that he was resident of Mazdoor Colony, village Kajheri. He was President of the Colony. He had been residing there for the last 14/15 years. On 20.07.2008 at about 10.30/11.00 AM, he had gone to the vacant land of Sector 53 across the road for answering the call of nature. He sat near a mango tree. When he got up after answering the call of nature, he saw a dead body lying beneath the mango tree. He went near that place. He noticed that the dead body was of a female aged about 19 years. Injuries were caused with the help of a stone on the face of the dead body. Some acid type chemical was also thrown on the face of the dead girl. He also stated in his statement that her Chunni (Dupatta) was also found lying on the spot in two pieces. A blood stained stone was found lying near her head. Thereafter, FIR Ex.P10 was registered. The rough site plan was prepared. Blood sample was picked up from the stone. It was made into a parcel and sealed with the seal of 'PS' at two places. Pair of footwear, two pieces of Dupatta and string were also made

into a parcel. These were taken into police possession vide memo Ex.P6. Jagdish Chander ASI and Shiv Kumar signed the memo as witnesses. Police Photographer Constable Rajesh Kumar also reached the spot. He took the photographs. Inquest proceedings were conducted. The post-mortem examination was conducted on 21.07.2008 by a Board of Doctors. The cause of death, according to the opinion of the doctors, was result of cranio-cerebral damage consequent upon blunt force. Injuries were ante-mortem in nature. The 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 accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They examined three witnesses in their defence. The accused were convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State has supported the judgment and order 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.2 Dr. Sandeep Singh Sahney along with Dr. Amandeep Singh, Dr. Arvinder Joshi and Dr. Birinder Kaur conducted the post-mortem examination. They noticed following injuries on the body of the deceased :-

- “1. Blackish charring of skin of face (both ears, neck, upper part chest, back of head, upper back, left shoulder and arm (outer and frontal aspect), 8 x 7 cm area on front of

left forearm with multiple scalds on both the upper limbs and front of abdomen.

2. A lacerated wound 1.7 x 0.5 cm on middle of bridge of nose. Imbibation of blood in underlying tissue.
3. 4 x 1 cm lacerated wound on left eye-brow underlying chipping of bone present. Imbibation of blood in underlying tissues present.
4. Lacerated wound 3.8 cm x 1 cm on right cheek 1 cm outer to right ala obliquely present. Clotted blood was present underneath. Underlying maxilla showed multiple fractures.
5. .4 x .3 cm lacerated wound 1.5 cm below middle of right eye.”

The cause of death was as a result of cranio-cerebral damage consequent upon blunt force. Injuries No.2 to 5 were ante-mortem in nature. The duration of injuries and death was recent and the duration between death and post-mortem was within 36 to 48 hours. After completion of post-mortem, the dead body, a sealed envelope containing copy of post-mortem report, forwarding letter to Chemical Examiner and police inquest papers, a sealed wooden box with ten seals containing viscera, a sample of skin for acid detection, a sealed packet containing two boxes, one containing thigh muscle of foetus and part of femur bone of foetus, a sealed box with one seal containing nail clipping of both hands.

7. PW.1 Constable Yash Pal prepared scaled site plan Ex.P1.
8. PW.3 Surjit Singh deposed that he was Ex-Sarpanch of village Kajheri. He was running a Hotel in village Kajheri. On 23.07.2008, in the after-noon at about 2.00 PM, he was present in his Hotel. The accused father and son, namely Jaswant and Sunil, came to him. They were living in

Mazdoor Colony in village Kajheri. They were nervous. They disclosed him that the police was time and again making inquiries from them. They told him that the daughter of Jaswant Singh was carrying pregnancy. Despite asking her a number of times, she did not disclose about the name of the person from whom she became pregnant. They further disclosed that this matter had become the talk of the colony. They could not bear the gossips in the area. They disclosed him that they had hatched a conspiracy. On the intervening night of 19/20.07.2008, they had taken Promila daughter of Jaswant Singh to the area of jungle in Sector 53, Chandigarh. She was strangled. Jaswant Singh had brought a stone and gave a blow on the face of the girl. Accused Sunil had poured acid on her face. They further disclosed him that accused Jaswant Singh had taken out string of the Salvar of Promila, so that it could appear as a case of rape and murder. They kept on making confession before him while they were walking towards the area of village Kajheri. They stood near the heap of bricks. In the meantime, he saw Gypsy of police. He signaled the Gypsy to stop. Inspector Devinder Sharma, SHO of Police Station Sector 36, Chandigarh, came down. He disclosed about the extra-judicial confession made by the accused to Inspector Devinder Sharma. Accused were arrested. In his cross-examination, he deposed that he was elected Sarpanch of the village for the first time in the year 1999. He came to know about the murder on 20.07.2008 at about 11.00 AM or 12.00 noon. He went to the spot and stayed there for about one hour. The police had already reached there.

9. PW.4 Shiv Kumar testified that he was residing in Mazdoor Colony, Sector 52, Chandigarh, for the last about 15 years. He was

President of Mazdoor Colony, village Kajheri. On 20.07.2008 at about 10.30/11.00 AM, he had gone to attend the call of nature in the area of jungle. When he was attending the call of nature, he noticed some object. He went to that place. He noticed dead body of a lady. He informed the police. SHO, Police Station Sector 36, Chandigarh, along with other police officials came there. He took the police officials to the spot. The articles i.e. stone, lady *chappal* of black colour and string were taken into police possession vide memo Ex.P6. The seal after use was handed over to him by the SHO. In his cross-examination, he deposed that after sealing the footwear, Dupatta etc. and the stone, the police handed over the parcel to him and instructed him to keep it safe. He brought it to his house and after two days, he gave the same to the police. He went to the Police Station to deposit the same. He was called for re-examination. He denied the suggestion that only the seal with which the parcel of Dupatta, string and *chappal* was handed over to him and not the parcel itself. Volunteered, parcel containing footwear, Dupatta and string was handed over to him. Volunteered, like-wise, the parcel containing stone was also given to him in particular and not the seal alone.

10. PW.5 HC Jaspal Singh deposed that on 20.07.2008, he was posted as MMHC in Police Station Sector 36, Chandigarh. Inspector Devinder Sharma, the then SHO, Police Station Sector 36, Chandigarh, deposited with him a parcel containing blood stained stone having two seals of 'PS', a parcel containing blood sample collected from the stone having seal of 'PS' at two places and another parcel containing a pair of ladies *chappal*, two pieces of Dupatta and a string having seal of 'PS' at two

places. On 21.07.2008, Inspector Devinder Sharma deposited with him a sealed parcel, one of which was containing a sealed packet containing two boxes, one containing thigh muscle of foetus and part of femur bone of foetus, another parcel containing viscera and an envelope containing documents. On 23.07.2008, parcel containing viscera and envelope were sent to CFSL, Sector 36, Chandigarh, through HC Ram Chander. On that very day, parcels at Sr. No. 2, 4 to 9 were sent to CFSL through HC Ram Chander. However, CFSL only retained the parcel containing piece of skin and other parcels were returned. The parcels at Sr. No.2, 4, 5, 6 and 7 were deposited with CFSL on 25.07.2008.

11. PW.7 Inspector Devinder Sharma deposed that on 20.07.2008, he was posted as SHO, Police Station Sector 36, Chandigarh. A wireless message was received regarding a dead body lying in the area of jungle of Sector 53, Chandigarh. He along with ASI Jagdish Chander and other police officials went there. On the way, one Shiv Kumar met him, who had seen the dead body. Shiv Kumar took them to the spot, where dead body of a young lady was found lying. He recorded the statement of Shiv Kumar vide Ex.P5. FIR Ex.P10 was registered. He prepared rough site plan. A blood stained stone was found lying near the head of dead body. Blood sample was picked up from the blood stains lying on the stone. A pair of black coloured ladies *Chappal* was also found lying near the feet of the dead body. A Dupatta in two pieces was also found lying. A string of trouser of that lady was also found lying there. These were taken into possession and converted into a parcel. A separate parcel of blood stained stone Ex.P6/5 was also prepared. A parcel of blood sample was separately prepared. Same

was sealed with seal of 'PS' at two places. These parcels were taken into possession vide Ex.P6. He also conducted the inquest proceedings. On 21.07.2008, he submitted an application for conducting the post-mortem examination. After post-mortem examination, HC Ram Chander produced before him seven parcels and an envelope. The first parcel was containing two small boxes of foetus, the second parcel was containing nail clipping of the deceased, third parcel contained swab sticks, the fourth parcel was containing one piece of skin, fifth parcel was containing clothes of the deceased. All the parcels and envelope in sealed condition were deposited with MMHC, Police Station Sector 36, Chandigarh, on that very day. On 23.07.2008, he along with SI Baldev, Incharge Police Post Sector 61, Chandigarh, and other police officials was present near Kajheri Chowk. PW.3 Surjit Singh met them. Surjit Singh told him that the accused had made extra-judicial confession before him. He arrested both the accused. The parcels were sent to CFSL. In his cross-examination, he deposed that the foetus was taken out in Sector 16 Hospital, Chandigarh and the doctor had handed over the same to him through HC Ram Chander in a sealed parcel. The same was sent to CFSL for test. He did not know if foetus was sent to CFSL for DNA test. He did not make any request for DNA test of the foetus.

12. DW.1 HC Brij Lal brought the record of the complaints dated 19.08.2008.

13. DW.2 Prem Singh deposed that Promila was having an affair with one boy, namely Jassi. He informed this to the mother of Promila. According to him, he had seen Promila and Jassi together in jungle for 3-4

times. However, in cross-examination, he could not give the date, time or the month when he had seen Promila and Jassi together in the jungle.

14. According to the FSL report Ex.P17, no poison was detected in exhibits-1, 2, 3, 4 and 5.

15. The case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the prosecution has to complete the chain. The extra-judicial confession was made by the appellants before PW.3 Surjit Singh. According to PW.3 Surjit Singh, on 23.07.2008, the appellants came to him and confessed the manner in which they had committed the crime. He along with the appellants was going towards the area of village Kajheri and in the meantime, the police came there. The appellants were arrested. He was not the Sarpanch at the time, when the appellants made extra-judicial confession before him. He was not a man of authority. In his cross-examination, he admitted that when the extra-judicial confession was made before him, he did not tell it to any person in the locality.

16. PW.4 Shiv Kumar deposed that he had gone to answer the call of nature on 20.07.2008 and noticed a dead body under a mango tree. He informed the police. The police reached the spot. The blood stained stone, a pair of footwear, two pieces of Dupatta and a string of the trouser, lying at the spot, were taken into possession. These were converted into parcel. In his cross-examination, he admitted that after sealing the footwear, Dupatta etc. and the stone, the police had handed over the parcel to him and instructed him to keep it in safe custody. He brought the same to his house and after two days, he had given the same to the police. He was re-

examined. In his re-examination, he reiterated that it was wrong to suggest that only the seal with which the parcel of Dupatta, string and *chappal* were sealed was handed over to him and not the parcel itself. Volunteered, parcel containing footwear, Dupatta and string was handed over to him. Volunteered, like-wise, the parcel containing stone was also given to him in particular and not the seal alone.

17. PW.5 HC Jaspal Singh deposed that the case property was handed over to him on 20.07.2008. PW.7 Inspector Devinder Sharma deposed that the case property was deposited by him with PW.5 HC Jaspal Singh on that very day. In case, the case property was with PW.4 Shiv Kumar for two days, as stated by him, how the same could be deposited with PW.5 HC Jaspal Singh by PW.7 Inspector Devinder Sharma, on 20.07.2008.

18. The case of the prosecution is that the appellants, as per their extra-judicial confession, killed Promila by strangulation. However, as per the statement of PW.2 Dr. Sandeep Singh Sahney, the cause of death was result of cranio-cerebral damage consequent upon blunt force. It has come in the statement of PW.2 Dr. Sandeep Singh Sahney that foetus was handed over to the police. PW.5 HC Jaspal Singh has admitted that it was handed over to him by PW.7 Inspector Devinder Sharma, but no report has been placed on record about the foetus.

19. PW.4 Shiv Kumar is a chance witness. In case, he had seen the dead body, he would have disclosed this fact to his co-villagers. Statement of PW.3 Surjit Singh, before whom the alleged extra-judicial confession was made, is not believable. There was no occasion for the appellants to go

to him, he being not a man of authority.

20. The case is based on circumstantial evidence. It is settled law that in a case based on circumstantial evidence, chain must be complete and all the circumstances must point towards the guilt of the accused. Thus, the prosecution has failed to prove its case against the appellants beyond reasonable doubt.

21. Accordingly, the appeal is allowed. The impugned judgment dated 22.01.2009 and order dated 24.01.2009 rendered by the learned trial court are set aside. Appellants Sunil and Jaswant Singh are acquitted of the charges framed against them. They are on bail. Their bail bonds and surety bonds are discharged.

(**RAJIV SHARMA**)
JUDGE

March 06, 2020
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

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