

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

Crl. Appeal No.D-108-DB of 2005

Date of Decision: March 06, 2020

Smt.Bhagwati Devi and another

...Appellants

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.K.P.S.Virk, Amicus Curiae and
Mr.Depinder Singh, Advocate
for the appellants.

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 13.01.2005 and order of sentence dated 17.01.2005 passed by learned Sessions Judge, Narnaul, vide which appellants were held guilty and convicted under Section 302 read with Section IPC and Section 120-B IPC and sentenced to undergo imprisonment for life and to pay fine of ₹5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one year, under each Section. Both the sentences were ordered to run concurrently.

The background facts in nutshell are, as follows:-

That, complainant Leela Ram resides in village Mori and works

as Cobbler at bus-stand Mandola. Bhagwati accused, is wife of Leela Ram. Three children were born from their wedlock. Eldest is daughter aged about 18-19 years, who is married, then his son Sandeep younger, who was studying in 8th class and youngest is daughter Manita, who is aged 7-8 years. The complainant had strained relations with Bhagwati for the last many days. The complainant and his son Sandeep were residing in a separate room and used to cook their food themselves. While, his wife Bhagwati and his daughter Manita were living separate from them. On 11.05.2004 at about 6.00 p.m., as usual, when the complainant had returned back from his workplace, he saw that the door of the room, which fell to his share, was half closed. He called his son Sandeep from window but he did not give any response. Then, complainant saw Sandeep standing in the room near the standing cot. In these circumstances, the complainant pushed and opened the door and saw his son Sandeep carefully. A piece of election time cloth (patta like ribbon/muffler) was tied in the neck of Sandeep and one end of this cloth was tied with the leg of standing cot and feet of Sandeep were touching the earth. Nearby, a *moora* was lying. In these circumstances, complainant found that his son has been hanged. He then went to the village and apprised the villagers about death of his son. He apprised Raj Kumar s/o Mila Ram, Ami Lal s/o Mani Ram, Mange Ram s/o Banwari Lal and to other people. Then Mange Ram s/o Banwari Lal had given message through telephone to Gajraj husband of Krishna, Sarpanch, who came to the spot along with others. He had given information to the police of Police Station, Kanina. Bhagwati, wife of the complainant had denied about having any information as she stated that she was harvesting the onion crop. The complainant felt sad about the death of his son, due to

strained relations of complainant with his wife. The complainant stated that death of his son is suspicious and therefore, action be taken. Further, it is stated that his wife Bhagwati has murdered his son and hanged him.

On the basis of statement of the complainant, DDR No.28 dated 11.05.2004 was recorded. Proceedings under Section 174 Cr.P.C. were conducted. Post-mortem examination of the dead body was got conducted on 12.05.2004, wherein, the cause of death was opined to be mechanical asphyxia due to hanging, which is sufficient to cause death, in ordinary course of nature. All the injuries were found to be ante-mortem in nature.

On 15.05.2004, complainant Leela Ram again got recorded his statement. In the same, besides reiterating the facts as stated in his earlier statement, on the basis whereof, DDR was recorded, furthermore, the complainant had stated that till date, he had been investigating about the death of his son at his own level. In his opinion, due to strained relations with his wife, either she has killed her son by hanging him or she has forced him to be hanged. He also stated that his wife used to put his son under fear, who used to threaten his wife, as she is of loose character and due to this reason, his wife was defamed, on account of which, his son was on good terms with her. Upon this, FIR was registered under Section 306 IPC. On 16.05.2004, in pursuance of the investigation conducted in the village and in view of the recitals of the post-mortem report, the Investigating Officer concluded about Bhagwati, wife of complainant, to be having illicit relations with Attar Singh and death of Sandeep had taken place, due to this relation. In these circumstances, offence under Section 306 IPC was deleted and addition of offence under Sections 302 and 120-B IPC was made.

On 17.05.2004, when ASI Om Parkash had gone to village

Bhojawas, where both the accused were produced before him by Rameshwar, Ex-Sarpanch. Both the accused Bhagwati and Attar Singh had made extra-judicial confession before Rameshwar and Surajbhan vis-à-vis murder of Sandeep due to their illicit relationship. During the course of interrogation, accused Attar Singh had made disclosure statement, on the basis whereof, joint photograph of Attar Singh and Bhagwati was got recovered and taken into possession, vide separate memo. On 18.05.2004, ASI Om Parkash had filed an application to know about the death of Sandeep was suicide or murder and the doctor opined that possibility could not be ruled out.

On completion of investigation, challan was presented against both the accused.

Compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge under Section 302 read with Section 34 IPC was framed against both the accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 15 witnesses, besides adducing documentary evidence.

The witnesses, so examined are **PW-1 Dr.Ranbir Singh, PW-2 ASI Brahm Prakash, PW-3 Constable Dharmapal, PW-4 Head Constable Ajesh Kumar, PW-5 Kumari Mamta, PW-6 Leela Ram, complainant, PW-7 Rameshwar, PW-8 Surajbhan, PW-9 Ram Chander, PW-10 Sandeep, PW-11 Gajraj, PW-12 Ram Swarup, PW-13**

SI Luxmi Naryana, PW-14 ASI Om Prakash and PW-15 ASI Mahabir

Prashad.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to the accused in their statement under Section 313 Cr.P.C. The accused denied those allegations and pleaded innocence. In fact, Bhagwati had taken the plea that she was arrested by the police on 12.05.2004 and Attar Singh was arrested on 16.05.2004 and thereafter, both of them were got photographed by the police. Similar plea was also taken by accused Attar Singh. However, both the accused did not lead evidence in defence.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, both the accused were held guilty, convicted and sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellants-convicts have filed the present appeal.

Even the trial Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the trial Court record.

At the very outset, learned counsel for the appellants has submitted that there is no direct evidence vis-à-vis the occurrence in question and as such, the case is based on circumstantial evidence. However, it is submitted that complete chain of circumstantial evidence, as such, is not build up by the prosecution. The manner in which the complainant apprised the police, about the occurrence and there being delay in initiation of proceedings, as such, raises doubt about the truthfulness of the prosecution version. In fact, it is submitted that it has not been

established with certainty about the death to have been occurred, as a result of hanging or strangulation. Even, extra judicial confession, so relied upon by the prosecution, is weak piece of evidence. Moreover, it is joint confession, which otherwise also, knocks down the prosecution version. As such, a prayer has been made by learned counsel for the appellants, for extending benefit of doubt to the appellants and to acquit them of the charges, levelled against them.

On the contrary, learned State counsel, has refuted the claim of the appellants. In fact, it is submitted that the version so coming forth, from the mouth of the complainant, is most natural and reliable one, which further finds corroboration from the medical evidence brought on record. Even, it is submitted that additional credence is coming forth, from the fact of extra-judicial confession, made by both the accused before PW-7 Rameshwar and PW-8 Surajbhan. As such, it is submitted that learned trial Court has appraised the evidence, in correct perspective and rightly concluded about guilt of the accused.

Thus, summing up his arguments, learned State counsel, has made a prayer for dismissal of the appeal.

In the criminal trial, however, intriguing may be the facts and circumstances of the case, the charges made against the accused, must be proved beyond all reasonable doubts and the requirement of proof, cannot lie in the realm of conjectures and surmises.

So far as, death of Sandeep is concerned, the same stands amply established from the testimony of **PW-1 Dr.Ranbir Singh**, who while being member of Board of Doctors, consisting of himself as

Dr.Balwinder Singh and Dr.Garish Kumar Sharma, had conducted post-

mortem examination on the dead body of Sandeep and has deposed about the external appearance of the body, as herein given:-

“Rigor mortis was present, all over the body. Hypostasis present on dependent parts encircling cloth ligature (greenish black) ligature, present around upper neck with knot on right from left side midway between mastoid process and clavicle over the thyroid cartilage (fractured) 2cm below right mastoid process. Saliva was dribbling from angle of mouth. No external mark of injury on body parts was present.

All other organs were healthy except larynx and trachea, which were congested with fracture of underlying thyroid cartilage.

Cause of death in this case was mechanical asphyxia due to hanging which was sufficient to cause death in ordinary course of time. All findings were ante mortem in nature.”

Thus, in the light of the aforesaid testimony, the fact of death of Sandeep, stands amply established.

Now, it has to be ascertained, as to whether, the death of Sandeep was homicidal or suicidal. Undisputedly, in the present case, there is no direct evidence, coming on record. It is a case based upon circumstantial evidence. It being so, inference has to be drawn by the Court, as to whether or not, the incriminating facts and circumstances, are found to be totally incompatible with the innocence of the accused. Of course, the circumstances, from which inference as to the guilt is drawn, have to be proved beyond reasonable doubt and shown to be connected with the principal facts, sought to be inferred from those circumstances. The circumstances, so coming forth, must be conclusive in nature. The

circumstantial evidence is a close companion of factual matrix, creating a fine network, through which, there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit the Court to arrive at any other inference, but one indicating the guilt of the accused.

In this backdrop, now adverting to the case in hand.

The proceedings in the present case were initiated on the basis of statement of complainant Leela Ram, got recorded on 11.05.2004. It is pertinent to mention that therein, the complainant, besides, deposing about the factum of his marriage with Bhagwati, had also deposed about three siblings having born from the said wedlock and further also about himself, to be having strained relations with his wife for the last many days and they were living separately. He also deposed about his son Sandeep to be living with him whereas, his daughter Manita was living with Bhagwati. Furthermore, he has deposed about the manner, in which, he spotted about his son, to be standing in the room, near the standing cot and further also, when he forcibly opened the door, he saw that his son Sandeep was tied in the neck with a piece of election time cloth (patta like ribbon or muffler) and one end of the cot was tied with the leg of standing cot. The feet of Sandeep were touching the earth and nearby, there was *moora*. He also stated there that it was found that Sandeep has been hanged. Then, he had apprised various people and police was also informed. Furthermore, in the said statement, he had stated that the death of his son is doubtful and action be taken, after enquiring about the matter, after conducting post-mortem examination. It is pertinent to mention that at tail-end, after stating that he

wife Bhagwati had murdered his son Sandeep and hanged him. This part of the statement, from the vernacular record, appears to have been added later on, which also creates doubt. Furthermore, it should be noted that at first instance, DDR was recorded and then, inquest proceedings were conducted and post-mortem examination was also got conducted. In the post-mortem report, the cause of death has been opined to be mechanical asphyxia due to hanging, which is sufficient to cause death, in ordinary course of time. It was, thereafter, on 15.05.2004, the complainant had again got recorded his statement, thereby, besides reiterating the facts earlier stated, he had also stated that in his opinion, on account of strained relations with his wife, Bhagwati has killed his son by hanging him or she has forced him to be hanged. He also stated therein that his wife used to put his son in fear and threaten him. His wife Bhagwati is a lady of loose character and due to this reason, his wife is defamed, on account of this, his son was not on good terms with his (complainant) wife. FIR was registered under Section 306 IPC. However, it was later on 16.05.2004, that Section 306 IPC was deleted and addition of Sections 302 and 120-B IPC was made. Therein, it was stated that the Investigating Officer, came to know about illicit relations of Bhagwati wife of Leela Ram with Attar Singh, due to which, death of Sandeep had taken place. Besides the same, also there was mention of hanging to have been concluded to be cause of death, in the post-mortem report. In the light of the same, it is pertinent to mention that in the first statement, got recorded on 11.05.2004, Leela Ram, though, had stated about himself to be having strained relations with his wife and living separately but however, he had not stated anything , relating to her character

statement that he had stated only about his wife to be having illicit relationship but again, he had not named Attar Singh. Also, it should be noted that after recording of the subsequent statement, the case was registered under Section 306 IPC. It was only thereafter that offence under Section 302 IPC was substituted. While in the witness box as PW-6, Leela Ram had though stated about the manner of spotting of dead body of Sandeep as already detailed aforesaid but however, he had also stated that he told the police that he suspected Bhagwati to have killed him (Sandeep). He told the police that she murdered Sandeep, on account of strained relations. Further, he also stated that she had illicit relations with Attar Singh accused. He proved his statement Ex.P8. Though, while facing cross-examination, he had stated that about his wife to be having illicit relations with Attar Singh but he was confronted with statement, where, there was no name of Attar Singh having mentioned, to be having illicit relations with his wife. He further admitted to be correct that on that day, he did not tell the police that his wife had been characterless. Thus, it is evident that name of Attar Singh was disclosed by Leela Ram, for the first time, while deposing in the witness box as PW-6. In the given circumstances, the testimony of Leela Ram, as such, is not reliable. In fact, various improvements have been made in his statement. In the light of the same, it is pertinent to mention that Leela Ram had also admitted in his cross-examination that police had taken Bhagwati in custody on 12.05.2004, which demolishes the prosecution version, about the production of both the accused by the persons, to whom extra judicial confession, was made by both the appellants. Thus, in the light of the testimony of the complainant,

furthermore, it is pertinent to mention that as per the version of the

prosecution, both the accused Bhagwati and Attar Singh, on 17.05.2004, had made the extra judicial confession of their guilt before Rameshwar, when they had gone to his house. Rameshwar is Ex-Sarpanch of the village and as per the version of the prosecution, both the accused had gone to his house at about 10.00 a.m. Even, Suraj Bhan was sitting with him at that time. This witness Rameshwar has stepped into witness box as PW-7 and has deposed that after coming to his *baithak*, both Bhagwati and Attar Singh had disclosed that they had killed Sandeep and also they had told that they had committed a mistake and on his asking, as to how, they killed Sandeep, Attar Singh disclosed that he had come over the chest of Sandeep and strangled him, while Bhagwati held him by legs. They told that they had put Sandeep in a hanging position with the help of strip of cloth. They also told him that police was searching for them and they asked him to facilitate their production before the police. He also further stated that thereafter, he had handed over them to the police. They had also disclosed that they had illicit relations and as such, Sandeep had grown up and he had started snubbing his mother for such conduct on her part. While facing cross-examination, this witness has stated that they (both the accused) had made joint confession before him. To the similar effect, is the testimony of PW-8 Suraj Bhan, who has stated about disclosure so having made by the accused in unison. Thus, it is evident from the testimonies of the said witnesses that the confession was made jointly. Thus, extra-judicial confession, so made, does not inspire confidence and it cannot be relied upon, as same has no value in the eyes of law, being joint in nature. Furthermore, it is pertinent to mention that in the statement under Section 313 Cr.P.C., it is specific claim

asserted by accused Bhagwati, to have been taken away by the police on

12.05.2004 and this fact has also been, so admitted by the complainant himself, while facing cross-examination and if it be so, then the version of making of extra-judicial confession, before PW-7 Rameshwar and PW-8 Surabhan on 17.05.2004, stands demolished. Even, it gives knock to the production of the accused before the police by PW-7 Rameshwar, as now asserted. This is the circumstance, which raises doubt about the version, so put forth, by the prosecution.

Besides the aforesaid, the medical evidence, so coming on record, also gives knock to the prosecution version. In this regard, it is pertinent to mention that at first instance, it was simply stated to be case of suicide. In the inquest report Ex.PB, it has been mentioned that it appears that deceased had committed suicide, on account of rope tied in neck. Furthermore, it was observed therein that foot of deceased Sandeep touched the earth, one cloth like ribbon is on the neck and dead body is hanged with the cot leg. The neck is also in large shape. Some portion of the tongue is out from the mouth. In the post-mortem report, while giving the description of the organs qua larynx and trachea, observation is congested with fracture on underlying thyroid cartilage. Even, the pictorial diagram reveals about ligature marking was non-continuous, place high up in the neck, between chin and larynx. Also, the Board of Doctors, concluded that cause of death is due to mechanical asphyxia due to hanging. Thus, there is variance about the cause of death to be by strangulation or hanging.

It is pertinent to mention that in **Chapter 19, Page 455, 24th Edition of Modi's Medical Jurisprudence and Toxicology**, there is given the distinction between hanging and strangulation in tabulated form and for

hand, the said table is reproduced herein below:-

<i>Hanging</i>	<i>Strangulation</i>
1. Mostly suicidal	1. Mostly homicidal.
2. Face- Usually pale and petechiae rare.	2. Face-Congested, livid and marked with petechiae.
3. Saliva- Dribbling out of the mouth down on the chin and chest.	3. Saliva-No such dribbling.
4. Neck-Stretched and elongated in fresh bodies.	4. Neck- Not so.
5. External signs of asphyxia, usually not well marked.	5. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6. Ligature mark- Oblique, noncontinuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	6. Ligature mark- Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.
7. Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7. Abrasions and ecchymoses round about the edges of the ligature mark, common.
8. Subcutaneous tissues, under the mark-White, hard and glistening.	8. Subcutaneous tissues under the mark-Ecchymosed.
9. Injury to the muscles of the neck-Rare.	9. Injury to the muscles of the neck Common.
10. Carotid arteries, internal coats, ruptured in violent cases of a long drop.	10. Carotid arteries, internal coats ordinarily ruptured.
11. Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.	11. Fracture of the larynx trachea and hyoid bone.
12. Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	12. Fracture-dislocation of the cervical vertebrae-Rare.
13. Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.	13. Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.
14. No evidence of sexual assault.	14. Sometimes evidence of sexual assault.
15. Emphysematous bullae on the surface of the lungs-Not present.	15. Emphysematous bullae on the surface of the lungs-May be present.

In this backdrop, it is pertinent to mention that as detailed aforesaid about the external appearance of the organs and about ligature marking, are contrary to each other, relating to it being a case of hanging or strangulation. Even, in the post-mortem report, there was mention of saliva

dribbling from angle of the mouth and there was no external injury found. This also demolish about the plea of strangulation and then body being hanged. In the light of such evidence, so coming forth, it cannot be concluded with certainty about Sandeep to have been strangled and then his body to have been hanged, to stimulate suicidal strangulation.

In the light of the aforesaid discussion, the version of the prosecution, vis-à-vis incriminating role of both the appellants Bhagwati and Attar Singh, as such, cannot be termed to be free from doubt and thus, benefit of doubt, ought to be extended to the accused.

Resultantly, we find merit in the appeal filed by the appellants and the same is allowed. The impugned judgment is set aside and appellants are acquitted of the charges, levelled against them.

As appellants Bhagwati and Attar Singh, are stated to be on bail, therefore, their bail/surety bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

March 06, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No