

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

CRA-D-1163-DB-2010 (O&M)

Reserved on:16.09.2022

Date of decision:22.09.2022

Karan Kumar

...Appellant

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. Eklavya Kumar, Advocate,
for the appellant.

Ms. Monika Jalota, Senior DAG, Punjab.

N.S. SHEKHAWAT, J.

Feeling aggrieved and dissatisfied with the judgment of conviction and order of sentence dated 05.10.2010 passed by the learned Sessions Judge, Jalandhar, whereby the appellant was held guilty for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life, besides pay fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year, the appellant has preferred the instant appeal under Section 374 Cr.P.C. before this Court. The learned trial Court relied upon the oral statements of the prosecution witnesses, having been supported by the medical evidence and the investigation, recorded the verdict of conviction of the appellant. Challenging the said verdict, the appellant is before this Court and has assailed the findings recorded by the learned trial Court on several counts.

The criminal prosecution was initiated in the instant case on the

basis of the statement Ex.PE made by PW-2 Babbu Sonker (complainant) to Inspector Paramjit Singh, PW-11. The complainant stated that he was the owner of House No.89, Bhoor Mandi situated within the jurisdiction of Police Station, Jalandhar Cantt., wherein he had kept tenants. About 20 days prior to the date of occurrence, one lady namely Satnam Kaur and one boy Karan Kumar (the appellant) came and took one room on rent for living. Later on, he came to know that the appellant had kidnapped Satnam Kaur wife of Sat Pal Singh. On the date of occurrence, i.e. 14.07.2009, the complainant went to the room of the accused-appellant and found foul smell emanating from the room and the door of the room was locked from outside. He broke open the lock of the room and found that Satnam Kaur was lying dead inside. He had firm belief that Satnam Kaur had been murdered by her paramour Karan Kumar (appellant herein) and he had run away from the spot after locking the door from outside. After recording the statement Ex.PE made by PW-2 Babbu Sonker, Inspector Paramjit Singh, PW-11, made his endorsement Ex.PE/1 and sent the same for registration of the case to the Police Station, on the basis of which, formal FIR Ex. PE/2 came into existence.

PW-11 Paramjit Singh, Inspector, conducted the initial investigation with the help of fellow police officials. The police inspected the spot, prepared rough site plan and sent the dead-body of Satnam Kaur to Civil Hospital, Jalandhar for post-mortem examination. PW-1 Dr Rajneesh Kumar conducted the post-mortem examination on 15.07.2009, on an application being moved by the police to Civil Surgeon, Jalandhar, who had constituted the Board of doctors, consisting of Dr. Damanjit Kaur, Dr. Des Raj and Dr Rajneesh Kumar, PW-1. The police took into possession the

clothes of the deceased and with the help of photographer took photographs of the place of occurrence. The accused was arrested and after completion of the investigation, the final report under Section 173 Cr.P.C. was presented in the competent court of law.

In support of the charge under Section 302 IPC, the prosecution examined as many as 13 witnesses and 03 witnesses were given up as unnecessary. After closure of the examination of the prosecution witnesses, the statement of the accused was recorded under Section 313 Cr.P.C., wherein he simply denied the prosecution version and pleaded false implication. He had taken a simple stand that he was innocent and had committed no offence. He was not present at the spot and was not living with Satnam Kaur (since deceased). In defence, the accused-appellant did not opt to lead evidence.

We have heard the learned counsel for the appellant as well as learned counsel for the State at length and with their able assistance, have gone through the entire material placed on record before us.

In the instant case, the prosecution was lodged with the recording of the statement Ex.PE of PW-2 Babbu Sonker (complainant) who had specifically named the present appellant as the person who had committed the crime in question. The dead body was noticed by him in the room, which was rented out by him to the appellant and Satnam Kaur (since deceased). In the FIR, Ex.PE, he had not only named the appellant as also the parentage and complete address of the appellant as well as of the deceased. The dead body was noticed in the day time on 14.07.2009 and the matter was reported at about 03.00 P.M on the same day without unnecessary delay on the part of the complainant. This clearly shows that

the FIR was registered with promptitude. No doubt, the immediate registration of the FIR by the complainant is no guarantee of truthfulness of allegations, but certainly such immediate registration of the FIR clearly rules out the embellishments or false implication of the accused. Still further, admittedly, the complainant was not inimical towards the appellant and he had no reason to name the appellant in the FIR, which was lodged immediately on finding the dead body by the complainant.

Learned counsel for the appellant assailed the testimonies of the material witnesses of the prosecution, namely, PW-2 Babbu Sonker (complainant) and PW-3 Raju Bengali by contending that both the witnesses had made contradictory statements. It has been submitted that PW-2 Babbu Sonker could not produce any evidence to show that the appellant and the deceased had taken a room on rent from him. PW-2 Babbu Sonker (complainant) stated that the room was rented at the rate of Rs.500/- per month but no writing was done in this regard. PW-2 Babbu Sonker (complainant) admitted that before renting the property, one would have to give prior information to the police as required under the law and he had not informed the police at the time of giving the room on rent. Consequently, the learned trial Court has wrongly placed reliance on the testimony of PW-2 Babbu Sonker to hold that the room was taken on rent by the appellant. We have considered the above-said submissions made by the learned counsel for the appellant and the arguments sans merit. It is a matter of common knowledge that near big cities, certain persons construct small rooms, which are let out to labourers on rent, as an additional income for the landlords. Normally, it is not expected from every landlord that he would execute a rent deed in favour of his tenants especially when most of

such tenants belong to the poor strata of the society. Still further, the labourers, who come from other States, take these rooms on rent for an uncertain period and keep shifting their places of residence. Consequently, no evidence relating to letting out the room on rent is created by the landlords. However, from a bare perusal of FIR, Ex.PE, it is evident that the complainant had mentioned the complete details and particulars not only with regard to the appellant but also of the deceased. This clearly establishes that proper record regarding the tenants had been maintained by the complainant and on noticing the commission of offence, he immediately reported the matter to the police with complete particulars of the tenant.

Learned counsel for the appellant further earnestly contended that PW-4 Om Parkash, who was also a tenant in the said premises did not support the case of the prosecution. PW-4 stated that the person, who had taken Room No.2 on rent, was not present in the Court on the said day and he made the said observation after seeing all persons present in Court. He was declared hostile and was cross-examined by the Public Prosecutor. Still further, it has been contended that PW-7 Gurpreet Singh son of the deceased has also not supported the case of the prosecution. PW-7 Gurpreet Singh clearly stated that he knew the appellant-accused present in the Court and he had not told him anything about the death of Satnam Kaur. Learned counsel for the appellant vehemently contended that in the wake of above-said two material prosecution witnesses turning hostile, the guilt of the appellant could not be established during the trial and he has been wrongly convicted. We have considered the said submissions made by the learned counsel for the appellant and find no substance in the same. At the cost of repetition,

we observe that PW-2 Babbu Sonker was a truthful witness, who reported the matter with complete details immediately after the occurrence. He was cross-examined by the learned defence counsel and no suggestion has even been put to him that as to why he was deposing falsely against the appellant. He was the landlord of the premises, where the appellant had stayed with the deceased for the last 15/20 days and they had got their details recorded in his records. Similarly, PW-3 Raju Bengali was a neighbour of the appellant in the same building. He clearly deposed that the appellant and the deceased slept in the room, near his room and the room was taken on rent by the appellant. After a few days, foul smell was coming out of the room and people had collected there. The dead body of Satnam Kaur was taken out after breaking open the locks and the matter was reported by the landlord to the police. Both these witnesses were cross-examined and nothing material could be elicited from the said cross-examination. Similarly, no suggestion was ever put to PW-3 Raju Bengali that he was inimical towards the present appellant. Even no suggestion has been put to the said witness to the effect that he had any reason to depose falsely against the present appellant.

The fact that some of the witnesses had turned hostile cannot be a ground itself to acquit the accused, especially when the testimonies of PW-2 Babbu Sonker and PW-3 Raju Bengali were consistent and sufficient to convict the appellant herein. In this behalf, a reference can be made to Section 134 of the Evidence Act, 1872 (for short 'the Act'), which reads as under:-

“134. Number of witnesses.- No particular number of witnesses shall in any case be required for the proof of any fact”.

Consequently, mere presence or absence of large number of

witnesses cannot be the basis of conviction. It is the quality of evidence and not number of witnesses, which is relevant. In fact, the quality of evidence always weighs with the court in determining the guilt of the accused or otherwise. The prosecution is under the responsibility of bringing its case beyond reasonable doubt and cannot escape that responsibility. In order to prove its case beyond reasonable doubt, the evidence produced by the prosecution has to be qualitative and may not be quantitative in nature. The said principle of law has been enunciated by the Hon'ble Supreme Court in the matter of ***Namdeo Vs. State of Maharashtra, 2007(2) RCR (Criminal) 893***, which reads as under:-

"20. Quoting Section 134 of the Evidence Act, their Lordships stated that "we have no hesitation in holding that the contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated."

21. The Court proceeded to state :

It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may

be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution.

The Court also stated :

There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.

*22. In the leading case of **Shivaji Sahebrao Bobade v. State of Maharashtra, (1973)2 SCC 793**, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."*

23. In **Anil Phukan v. State of Assam, 1993(3) RCR (Criminal) 241 : (1993)3 SCC 282 : JT 1993(2) SC 290**, the Court observed : *"Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."*

24. In **Kartik Malhar v. State of Bihar, 1996(1) RCR (Criminal) 308 : (1996)1 SCC 614 : JT 1995(8) SC 425**, referring to several cases, this Court stated : *"On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the court, at the same time, is convinced that he is a truthful witness. The court will not then insist on corroboration by any other eye witness particularly as the incident might have occurred at a time or place when there was no possibility of any other eye witness being present. Indeed, the courts insist on the quality, and, not on the quantity of evidence."*

25. In **Chittar Lal v. State of Rajasthan, 2003(3) RCR (Criminal) 857 : 2004(1) Apex Criminal 368 : (2003)6 SCC 397 : JT 2003(7) SC 270**, this Court had an occasion to

consider a similar question. In that case, the sole testimony of a young boy of 15 years was relied upon for recording an order of conviction. Following Mohamed Sugul and reiterating the law laid down therein, this Court stated :

"The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent cases where the testimony of a single witness only could be available, in number of crimes offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact."

(emphasis supplied)

*26. Recently, in **Bhimappa Chandappa v. State of Karnataka, (2006)11 SCC 323**, this Court held that testimony of a solitary witness can be made the basis of conviction. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony."*

Consequently, on consideration of the consistent evidence of

PW-2 Babbu Sonker (complainant) and PW-3 Raju Bengali, the impugned judgment of conviction can be safely based on the testimonies of the said two prosecution witnesses.

Learned counsel for the appellant has further referred to the discrepancy in the prosecution evidence with regard to breaking the lock of the door of the room. As per PW-2 Babbu Sonker, he had broken the lock of the door of the room, whereas PW-3 Raju Bengali had stated that the police had broken the lock of the door of the room. In fact, it can never be termed as a material discrepancy. Otherwise also, the statement of PW-3 Raju Bengali has to be read as a whole and in his examination-in-chief, he admitted that the owner of the house was called at the spot and the door of the room was opened by breaking the lock. In fact as observed above, both the witnesses had consistently deposed the facts regarding the commission of crime and there were no material improvements or discrepancies in the statements of the said two witnesses. Moreover, the accused had not stated anything in his statement under Section 313 Cr.P.C. to prove his innocence. He simply stated that he had been falsely implicated in the instant case. He was not present at the spot and was not living with the deceased.

Learned counsel for the State has vehemently contended that the incident had taken place inside the privacy of the house and in such a situation, it was difficult for the prosecution to lead any direct evidence to establish the guilt of the accused. In the instant case, even PW-1 Dr. Rajneesh Kumar had deposed that the cause of death was asphyxia due to strangulation and the deceased Satnam Kaur was subjected to sexual intercourse. Consequently, the doctor had conclusively opined that it was a case of homicidal death and the onus was heavy on the appellant, who was

residing with the deceased to give an explanation with regard to the commission of the crime.

We have considered the submissions made by the learned counsel for the State and found substance in the same. In our view, the most important aspect is where the death was caused and the dead body was found. It was in the precincts of the house/room taken on rent by the appellant, where only the appellant and Satnam Kaur (since deceased) were staying. Still further, there was no possibility of somebody from outside coming and strangulating the deceased and that too without any commotion being caused or noticed by the neighbours. We are confronted with a factual situation, where the appellant herein, as a lover, is stated to have caused the death of his partner by strangulation. Even as per PW-2 Babbu Sonker, duly supported by the evidence of PW-3 Raju Bengali, the presence of the appellant with Satnam Kaur (since deceased) was quite obvious. No explanation has been given by the appellant as to how and under what circumstances, Satnam Kaur (since deceased) was strangulated by someone. This is a strong circumstance indicating that he is responsible for the commission of the crime. The appellant herein was under a legal obligation to give plausible explanation regarding the cause of death in his statement recorded under Section 313 Cr.P.C. and mere denial could not be the answer in such a situation.

Having observed so, it is trite to observe that the appellant-accused had failed to offer an explanation as to how and when he parted company with the deceased and it would have a bearing on the effect of last seen in the instant case. Section 106 of the Act provides that the burden of proof for any fact i.e. especially within the knowledge of a person lies upon

such person. Thus, if a person is last seen or last residing with the deceased, as in the instant case, he must offer an explanation as to how and when he parted company with the deceased. He is under a legal obligation to furnish a probable and satisfactory explanation to the Court and if he fails to offer such an explanation on the basis of the facts within his special knowledge, the burden cast upon him under Section 106 of the Act is not discharged. More particularly in cases resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such a failure by itself can provide an additional link in the chain of circumstances proved against him. At the same time, it can never be suggested that Section 106 of the Evidence Act shifts the burden of proof of a criminal trial on the accused and such burden always rests on the prosecution. Section 106 of the Act only lays down the rule that when the accused does not throw any light upon the facts which are especially within his knowledge and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.

As per Section 101 of the Act, whoever desires any Court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. The burden is always heavy on the prosecution to prove the guilt of the accused beyond the shadow of reasonable doubt. Thus apparently, Section 106 of the Act constitutes an exception to Section 101 of the Act. There is a classic decision of the Hon'ble Supreme Court in the matter of **Shambu Nath Mehra Vs. State of Ajmer**, 1956 AIR (SC) 404, which has stood the test of time and the

relevant part of the said decision has been reproduced below:-

“10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist".

Illustration (a) says –

"A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime".

11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary. It is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

*It is evident that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are **Attygalle v. The King, 1936 PC 169 and Seneviratne v. Rule 1936-3 ER 36 AT P. 49.***

12. Illustration (b) to Section 106 has obvious reference to a very special type of case namely to offences under Sections

112 and 113, Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass, etc.

Now if a passenger is seen in a railway carriage, or at the ticket barrier, and is unable to produce a ticket or explain his presence, it would obviously be impossible in most cases for the railway to prove or even with due diligence to find out, where he came from and where he is going and whether or not he purchased a ticket.

On the other hand, it would comparatively simple for the passenger either to produce his pass or ticket or, in the case of loss or of some other valid explanation, to set it out, and so as proof is concerned, it would be easier for him to prove the substance of his explanation than for the State to establish his falsity.

13. We recognise that an illustration does not exhaust the full content of the section which it illustrate but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose exercise due diligence, as to the accused, the facts cannot be said to be especially" within the knowledge of the accused.

This is a section which must be considered in a common sense way; and the balance of convenience and the disproportion of labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that save in a very exceptional class of case, the burden is on the prosecution and never shifts."

In the instant case also, the record clearly reveals that the appellant herein had stayed with Satnam Kaur (since deceased) and she was subjected to sexual intercourse before she was strangled to death. The

testimonies of PW-2 Babbu Sonker and PW-3 Raju Bengali are found to be truthful and the onus was on the appellant to discharge the same, in view of the fact that prosecution had discharged the primary onus. Consequently, this, in turn, connects the accused-appellant to the crime in question.

In view of the above, we find no illegality or impropriety in the findings recorded by the learned trial Court, warranting interference by this Court. Consequently, the present appeal is hereby dismissed, being devoid of any merit. Resultantly, the impugned judgment of conviction and order of sentence dated 05.10.2010 passed by the learned Sessions Judge, Jalandhar are upheld. The appellant be taken in custody forthwith, if he is on bail, to serve the remaining part of his sentence.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation. The trial Court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

22.09.2022

mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO