

CRA-D-813-DB of 2012 (O&M)

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

CRA-D-813-DB of 2012 (O&M)

Reserved on : 14.01.2022

Date of pronouncement: 20.01.2022

Virender

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Argued by: - Mr. Pankaj Mohan Kansal, Legal Aid Counsel,
for the appellant.

Mr. Ankur Mittal, Additional Advocate General, Haryana
With Mr. Saurabh Mago, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J.

[1] This appeal has been preferred against the judgment of conviction dated 28.04.2012 and order of sentence dated 30.04.2012 passed by Sessions Judge, Narnaul, whereby appellant has been held guilty and sentenced to undergo life imprisonment and to pay fine of ₹5000/- under Section 302 IPC and in default of payment of fine to further undergo rigorous imprisonment for six months; to undergo rigorous imprisonment for a period of six months under Section 323 IPC and to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1000/- under Section 325 IPC and in default of payment of fine to further undergo simple imprisonment for fifteen days. All the above sentences have been ordered to run concurrently.

[2] The facts and circumstances giving rise to the present appeal are that the appellant had five daughters and two sons. Deceased-Geeta was

his eldest daughter. His sister Savitri and brother Naresh visited his house

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on 09.11.2010 to discuss proposal of two boys for the marriage of his daughters Geeta and Reetu. His sister told the appellant that proposed boys belong to Raipur and they would shortly visit her house. On the next day i.e. 10.11.2010 at 9.00 A.M., appellant's sister again visited his house to inform that the proposed boys had reached her home. She left his house telling the appellant that he may reach her home to see the boys if he was keen for settlement of his daughters' marriage. Appellant's daughter Reetu moved out of the house in order to see off Savitri. Meanwhile, when Geeta was alone in the *baithak* of the house, the appellant-accused tried to commit rape upon her and when she resisted, the appellant got infuriated and tried to intimidate her. Geeta, however, continued to offer resistance, which further annoyed the appellant-accused. He picked up a *kulhari* lying inside the house and inflicted blows on the neck and head of Geeta. She tried to rescue herself but was badly injured and fell on the ground and started crying. When appellant-accused's wife came to the rescue of her daughter, he inflicted injuries to her as well. The appellant-accused later dragged Geeta first to the courtyard of his house and then to the street abutting in front of his house. On hearing noise, appellant's sister Savitri and daughter Reetu rushed to the spot. The appellant-accused then undressed himself and fled away from the scene alongwith *kulhari*. Geeta died on the spot. Some person informed the police on telephone. Dharam Pal, Sub Inspector, the then Station House Officer, Police Station Satnali along with other police officials reached the spot and recorded the statement of appellant-accused's wife and forwarded the same to Police Station for registration of FIR. The inquest proceedings were conducted and body of deceased-Geeta was sent to Government Hospital for post-mortem examination. The police had seized

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the sample of blood-stained earth from the spot besides taking into possession the other articles found lying there. The recovered articles included blood-stained clothes of the appellant-accused and a broken piece of handle of *kulhari* used by him. The appellant was arrested on the same day at about 6.00 P.M. On interrogation, appellant-accused made a disclosure statement and got recovered *kulhari* used by him. After completion of investigation, police had challaned the appellant-accused.

[3] The Magistrate, in whose Court challan was filed, supplied a copy of challan and documents attached therewith to the appellant-accused free of costs as envisaged under Section 207 Cr.P.C. Then the case was committed to the Sessions Judge as it involved the offences which were exclusively triable by the Court of Sessions.

[4] On appraisal of the police report filed under Section 173 Cr.P.C. and the documents attached therewith and after hearing the counsel for the parties, appellant-accused was charged for offences punishable under Sections 323, 325, 302, 376/511 IPC. Appellant-accused denied the charges and claimed trial.

[5] In order to prove charges, prosecution examined as many as 16 witnesses.

[6] After conclusion of prosecution evidence, appellant-accused was examined under Section 313 Cr.P.C. He refuted the incriminating circumstances and pleaded that he has falsely been implicated in the case. He was not present in his house at the time of alleged occurrence and some unknown person after murdering his daughter-Geeta had run away from the scene leaving a *kulhari* in the street. However, no evidence in defence was led.

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[7] After hearing learned counsel for the prosecution as well as for the defence and appreciation of evidence, learned Sessions Judge, Narnaul, held the appellant-accused guilty for the offences punishable under Sections 302, 323, 325 IPC and sentenced the appellant-accused to undergo imprisonment as narrated above. The appellant-accused was acquitted of the charge under Section 376/511 IPC as his complicity regarding the offences punishable under these Sections was not established.

[8] Mr. Pankaj Mohan Kansal, learned legal aid counsel, appearing on behalf of the appellant vehemently contended that the appellant is an innocent person and has been wrongly and illegally convicted by the trial Court. The trial Court failed to appreciate that the prosecution failed to prove its case beyond reasonable doubt. The appellant did not make any disclosure statement and the recovery memo also was not signed by him. The objects allegedly recovered from the spot of occurrence had been planted upon him. Learned counsel further contended that both eyewitnesses, namely, Savita, wife of the appellant-accused and mother of the deceased (PW4), who is author of the FIR and Savitri, sister of the appellant-accused (PW5) have turned hostile and not supported the case of the prosecution. The trial Court has wrongly observed that PW4 and PW5, being closely related to the appellant, intended to favour the appellant-accused. He further submitted that FSL report did not show matching of the blood group on the clothes of the accused and weapon so recovered from the accused with that of the deceased. As per FSL report the blood stains on the handle of *kulhari* were disintegrated. Origin of blood on the article could not be determined and there is no report regarding the finger prints of the accused on the alleged weapon of offence. Lastly, learned counsel for the

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appellant contended that it is a case of circumstantial evidence and the trial Court failed to appreciate that the chain of circumstances is not complete. Hence, the appeal deserves to be allowed. In support of his contentions, learned counsel for the appellant placed reliance on the Hon'ble Supreme Court in ***Kansa Behera v. State of Orissa, AIR 1987 (SC) 1507; Sattatiya @ Satish RajannaKartalla v. State of Maharashtra, (2008) 3 SCC 210; Bijender @ Mandar v. State of Haryana, Criminal Appeal No.2438 of 2020 decided on 08.11.2021 and Mustkeem @ Sirajudeen v. State of Rajasthan, 2011 (3) Crimes 118.***

[9] Per contra, learned counsel appearing on behalf of the State of Haryana has vehemently opposed the appeal contending that the circumstances in the present case point towards the guilt of the appellant without any exception. Recovery of weapon of offence was clearly made in view of disclosure statement suffered by the appellant. Learned State counsel further argued that the appellant absconded after committing the crime and could be arrested in the evening at about 6.00 P.M. on the same day. Learned State counsel also contended that the very circumstances that stood proved pointed towards the guilt of the appellant and in the light of the facts and circumstances of the case, no one except the appellant could have committed the murder of his daughter Geeta. In support of his contentions, learned State counsel relied upon the judgments of the Hon'ble Supreme Court in ***Sunil Clifford Daniel v. State of Punjab, (2012) 11 Supreme Court Cases 205; R. Shaji v. State of Kerala, (2013) 14 Supreme Court Cases 266; Gura Singh v. State of Rajasthan, (2001) 2 Supreme Court Cases 205; Daya Ram and others v. State of Haryana, (2015) 12 Supreme Court Cases 373; GeejagandaSomaiah v. State of Karnataka, (2007) 9***

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Supreme Court Cases 315 and the judgment of Privy Council in ***PulukuriKottaya and others v. The King-Emperor, 1946 SCC Online PC 49.***

[10] We have considered the rival submissions made by learned counsel for the parties and perused the records.

[11] At the very outset, it will be apposite the mention that both the eyewitnesses, namely, Savita, wife of the appellant-accused and mother of the deceased (PW4), who is author of the FIR and Savitri, sister of the appellant-accused (PW5) have resiled from their earlier statements made to the police and have not supported the prosecution case.

[12] As per the deposition of Dharam Pal, Sub Inspector (PW14), who is investigating officer of the case, on 10.11.2010 on receipt of information to the effect that Virender appellant-accused had caused injuries to his wife and other villagers and run away. He along with police officials reached at the spot and recorded the statement (Ex.PJ) of Savita, wife of Virender accused, which was thumb marked by her in token of its correctness. He arranged a photographer, who took the photographs of the dead body. He inspected the dead body as well as the place of occurrence. He lifted the blood-stained earth from the spot, which was taken into plastic container and duly sealed with the seal of 'DP'. From the *baithak*, he took two ear rings of deceased Geeta from which one ear ring was broken and some broken pieces of bangles were also taken, which were duly kept in a plastic container and duly sealed with the seal of 'DP'. One pair of *hawai chappal* which was stained with blood belonging to accused Virender and one pair of *hawai chappal* stained with blood belonging to deceased Geeta were taken into possession from the *baithak* and same were converted in two

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separate sealed parcels. One broken handle of *kulhari* was taken into possession. All the abovesaid articles were taken into possession vide seizure memo Ex.PB. He also lifted blood-stained earth from the courtyard of house of the accused Virender and also lifted one *chunni* and clothes of accused Virender stained with blood, which were taken into possession vide recovery memo Ex.PC. He further lifted blood-stained earth from the street where dead body of Geeta was lying. Seal after use was handed over to PW Naresh. Rough site plan of place of occurrence Ex.PW14/A was prepared with correct marginal notes. He conducted proceedings under Section 174 Cr.P.C. (Ex.PW8/D). Thereafter, he deputed Constable Dilbag (PW11) for getting postmortem examination of deceased Geeta with application Ex.PW8/E. On the same day at about 6.00 P.M., he arrested accused Virender from behind the railway station.

[13] On the next date i.e. 11.11.2010, on interrogation, accused Virender suffered disclosure statement Ex.PF to the effect that he had kept concealed *kulhari* in the bushes behind the railway station, Satnali, near the way leading to village Jarwa. In pursuance of that disclosure statement, accused Virender got recovered one blood-stained *kulhari* with broken handle. Same was taken into possession vide seizure memo Ex.PH. A pair of *chappal* of Geeta was Ex.P1; pair of *chappal* of accused Virender Ex.P2; *kulhari* Ex.P3; broken handle Ex.P4; clothes of accused i.e. *pajama* Ex.P5, shirt Ex.P6, underwear Ex.P7 and T-shirt Ex.P8; clothes of deceased i.e. shirt Ex.P9, salwar Ex.P10, jamphar Ex.P11, *chunni* Ex.P12 and *chunni* of deceased which was taken in possession from the courtyard of the house of the accused was Ex.P13.

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[14] Naresh PW2 fully corroborated the testimony of investigating officer regarding the lifting of blood stains from the place of occurrence and other articles belonging to deceased Geeta on 10.11.2010. He also stated that clothes of accused Virender were taken into possession by the police vide memo Ex.PC.

[15] The prosecution case is further strengthened by the FSL report dated 18.03.2011 Ex.PL. All the recovered clothes/articles with blood stains were sent to Forensic Science Laboratory, Haryana, Madhuban, Karnal for examination. Blood was detected on the clothes and other articles. The origin of blood was found to be of human. As per FSL report Ex.PM, broken pieces of wooden danda marked exhibit-5 and broken danda of *kulhari*/axe marked exhibit-10 have the similar and physical and microscopic appearance. Further, broken edges of wooden danda marked exhibit-5 and *kulhari*/axe marked exhibit-10 were physically fitted among each other.

[16] It has been argued by learned counsel for the appellant that as the blood group of the blood-stains found on the *kulhari* could not be ascertained, therefore, recovery of said *kulhari* cannot be relied upon.

[17] A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this

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regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group (s) loses significance. (*Vide : Prabhu Babaji Navie v. State of Bombay, AIR 1956 SC 51; Raghav Prapanna Tripathi v. State of U.P., AIR 1963 SC 74; State of Rajasthan v. Teja Ram, AIR 1999 SC 1776; Gura Singh v. State of Rajasthan, AIR 2001 SC 330; John Pandian v. State, represented by Inspector of Police, Tamil Nadu, (2010) 14 SCC 129; and Dr. Sunil Clifford Daniel v. State of Punjab, JT 2012 (8) SC 639*).

[18] In view of the above, the Court finds that it is not possible to accept the submission that in the absence of a report regarding the origin of the blood, the accused cannot be convicted, for it is only because of the lapse of time, that the blood could not be classified successfully. Therefore, no advantage can be conferred upon the accused to enable him to claim any benefit, and the report of dis-integration of blood etc. cannot be termed as a missing link, on the basis of which the chain of circumstances may be presumed to be broken.

[19] The most important circumstance for the prosecution is the disclosure statement of the accused and the recovery of weapon of offence consequent upon such disclosure statement. The position of law in relation to Section 27 of the Evidence Act was elaborately made clear in ***State of Maharashtra v. Damu, (2000) 6 SCC 269*** wherein the Hon'ble Supreme Court held as under: -

“35.The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a

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*prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the Section. The decision of Privy Council in **Pullukurri Kottayya vs. Emperor AIR 1947 PC 67** is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the Section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."*

[20] In the instant case also the disclosure statement was made by the accused on the next day of commission of offence and blood-stained *kulhari* was recovered at his instance from the place where he had kept it concealed, on the same day. To the same affect are the judgments in **Mukund @ Kundu Mishra and another v. State of M.P.**, AIR (1997) SC 2622 and **Ronny @ Ronald James Alwaris etc. v. State of Maharashtra**, AIR (1998) SC 1251 . In the latter case the Hon'ble Supreme Court held:

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr.Mohan Ohol. Mrs. Runi Ohol and Mr. Rohan Ohol) which possession has remained unexplained by the appellants the presumption under Illustration (a) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction.

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The irresistible conclusion would therefore, be that the appellants and no one else had committed the three murders and the robbery."

[21] It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to incriminating circumstances associated with him and the Court must take note of such explanation even in a case of circumstantial evidence to decide as to whether or not the chain of circumstances is complete. Hon'ble Supreme Court in ***State of Maharashtra v. Suresh, (2000) 1 SCC 471*** held that when the attention of the accused is drawn to such circumstances that inculcate to him in relation to the commission of crime and he fails to offer an appropriate explanation or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing chain of circumstances.

[22] In the instant case when examined under Section 313 Cr.P.C., the accused pleaded innocence and further stated that he was not present in his house on the date of alleged occurrence. Some unknown person had caused murder of his daughter Geeta and ran away from the spot leaving *kulhari* in the street. However, no evidence in his defence was produced by the accused. In other words, the accused has not given any explanation whatsoever as regards the incriminating circumstances put to him under Section 313 Cr.P.C.

[23] In ***Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622***, it was held by the Hon'ble Supreme Court that the onus is on the prosecution to prove that the chain is complete and that falsity or untenability of the defence set up by the accused, cannot be made the basis

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for ignoring any serious infirmity or lacuna in the case of the prosecution.

The Hon'ble Supreme Court then proceeded to indicate the conditions which must be fully established before a conviction can be made on the basis of circumstantial evidence. These are:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must’ or ‘should’ and not ‘may be’ established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) 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”.

Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance, by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst

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finding an accused guilty, solely on the basis of the circumstances proved before it.

[24] We have no doubt in our mind that the appellant had made voluntary disclosure statement Ex.PF, which led to the recovery of the weapon of offence i.e. blood-stained *kulhari* with broken handle which was concealed by him underneath the bushes, which was compared with the broken handle stained with human blood and upon analysis it was found that the broken handle was of the same *kulhari*, which was got recovered by the appellant-accused.

[25] The aforesaid circumstances are sufficient to come to a conclusion that appellant committed the murder of his daughter Geeta and has rightly been convicted and sentenced by the trial Court in the manner as aforesaid.

[26] There is no merit in the appeal, which is accordingly dismissed.

(Ritu Bahri)
Judge

(Ashok Kumar Verma)
Judge

January 20, 2022
R.S.

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No