

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

CRA-D No.100-DB of 2018 (O&M)

Date of Decision: 28th April, 2022

Sajid Hussain

....Appellant

Versus

Union Territory Chandigarh

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. K.S.Dhillon Advocate
for the appellant.

Mr. J.S.Toor, Additional Public
Prosecutor, UT, Chandigarh.

Mr. Shokeen S. Verma, Advocate,
for the complainant.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment dated 26.07.2017 and the order on sentence dated 31.07.2017 handed down by learned Sessions Judge, Chandigarh (for short 'the trial Court') in the criminal case arising out of the FIR bearing No.232 dated 01.08.2015 registered at Police Station Industrial Area, Chandigarh, under Section 302 IPC whereby the appellant has been held guilty for committing the offence under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay the fine to the tune of Rs.5,000/- and in case of default in payment of the same, to further undergo rigorous imprisonment for a period of six months, he (appellant) has preferred the present appeal.

2. Shorn and short of unnecessary details, the allegations, as levelled against the appellant (accused) in the instant case, are that on 01.08.2015, on receipt of an intimation regarding the death of one Sabia, SI Sukhjinder Singh, along-with some other police officials, reached at the house of complainant Anisha and there, he recorded her statement wherein she alleged that the deceased was the cousin sister of her daughter-in-law named Rubina and about 1½ month prior to that day, she (deceased), along-with her husband, i.e the appellant, had come to Chandigarh for the treatment of the appellant and since then, they had been staying in her house. On the previous night, they had slept in a separate room but in the morning, she noticed that they had not come out of the room and therefore, she knocked at the door of their room but none responded from inside. Then, she entered in the room and found that the deceased was lying on the bed with the injuries on her body and the appellant was missing from there. The appellant had been suspecting the fidelity of the deceased and they both had been having constant quarrels between them over this issue and the appellant had once consumed the acid on this score. This statement was forwarded to the Police Station where the formal FIR was registered. Later in the day, the appellant was arrested on his identification by the complainant. Further investigation was, then, carried out and on the completion thereof, the Challan/police report under Section 173 (2) Cr.P.C was presented in the Court against the appellant.
3. After perusing the police report/Challan and hearing learned Public Prosecutor and learned defence counsel, the trial Court framed the charge against the appellant under Section 302 IPC and he (appellant)

pleaded not guilty to the same and claimed trial.

4. To substantiate its allegations against the appellant (accused), the prosecution examined as many as 15 (fifteen) witnesses namely SI Jaivir Singh Rana as PW-1, Raheesh Ahmed as PW-2, Mohd. Safeeq, the father of the deceased, as PW-3, C. Rajeshwar as PW-4, HC Yashpal, Draftsman, as PW-5, C. Mohinder Kumar as PW-6, HC Satnam Singh as PW-7, C. Devinder Dhull as PW-8, Dr. Ajay Kumar as PW-9, HC Jaimal Singh as PW-10, Anisha @ Nasima, the complainant-informant, as PW-11, SI Sukhjinder Singh, the Investigating Officer, as PW-12, ASI Jaipal Singh as PW-13, Dr. Kartik as PW-14 and Dr. Sukhjinder Pal Singh as PW-15. Then, learned Public Prosecutor closed the evidence of the prosecution and thereafter, the appellant was examined under Section 313 Cr.P.C so as to explain the incriminating material/circumstances appearing against him in the prosecution evidence on the record wherein he (appellant) pleaded innocence and stated that he had no role in the alleged occurrence and had been falsely implicated in this case and rather, on the day of the said occurrence, he had gone to Delhi for some domestic work and had been arrested by the police after being called from there. However, he did not lead any evidence in his defence.

5. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the UT (assisted by learned counsel for the complainant) in this appeal and have also perused the record carefully.

6. Learned counsel for the appellant has contended that PW-11 Anisha @ Nasima, who was the star witness of the prosecution, turned hostile while deposing in the Court and this fact eats into the vitals of the

entire case of the prosecution and makes it highly doubtful. He has further contended that PW-3 Mohd. Safeeq is the father of the deceased and PW-2 Raheesh Ahmed is stated to be a close acquaintance of PW-3 and thus, both of them are interested witnesses and therefore, their testimonies could not have been relied upon to record the conviction of the appellant in this case. Lastly, he has contended that the appellant was not even present in the town at the time of the alleged commission of the offence and rather, he was away to Delhi at that time, in connection with some personal work and the police had called him from there and had arrested him and in these circumstances, he (appellant) deserves his acquittal in the present case.

7. Per-contra, learned Additional Public Prosecutor for the UT has argued that the trial Court has convicted the appellant after appreciating and evaluating the evidence, as adduced on the record, in the right perspective and therefore, the impugned judgment as well as the order on sentence are perfectly legal and justified ones.

8. As regards the contention qua PW-11 Anisha @ Nasima having turned hostile at the time of appearing in the witness-box, a perusal of her entire testimony, as recorded by the trial Court, reveals that she has refused to support the prosecution version mainly on two counts, i.e regarding the motive as well as qua the recovery of the iron pipe at the instance of the appellant, in her presence. It is worth-while to mention here that in the concluding part of her cross-examination by learned Public Prosecutor, she has categorically deposed that on the day of occurrence, she was under shock and since much time had lapsed from that day, therefore, she could not exactly recollect the statement made by her before

the police. Her afore-mentioned explanation seems to be quite genuine and spontaneous. It is well settled that in case, a witness partly resiles from corroborating the version of the prosecution, then his/her entire testimony cannot be painted with black colour and rather, the depositions of such witness can be relied upon so far as the same support such version, although with the higher degree of caution and the scrutiny thereof. The above-named witness has specifically deposed regarding the factum of the deceased and the appellant having been staying with her for 1½ month prior to the day of the alleged occurrence and qua the deceased having been found lying on the bed in a pool of blood and the appellant missing from the room and the police having been informed in this regard. We find a ring of truth around her afore-said depositions, when read in juxta-position with her above-discussed explanation and therefore, there are no cogent reasons to brush aside the same in toto.

9. So far as the contention regarding the afore-named PW-2 and PW-3 being the interested witnesses is concerned, the mere facts that PW-3 happens to be the father of the deceased and PW-2 is a close acquaintance of PW-3, in themselves, do not suffice at all to discard their testimonies because they have been exhaustively cross-examined by learned defence counsel and have stood firm on their version throughout. Moreover, PW-3, being the father of the deceased, is certainly supposed to be quite well aware of the factum of the matrimonial discord between his daughter and son-in-law, i.e the appellant, because of his (appellant's) having suspicion regarding her fidelity and as a normal human being, there is every likelihood of his having shared his concern as well as the tension over this

matter with PW-2, his close acquaintance. It being so, their testimonies qua the strained relations between the deceased and the appellant over the above-said issue do inspire confidence.

10. Lastly, though in his statement as recorded under Section 313 Cr.P.C, the appellant has stated that he was at Delhi at the time of the alleged occurrence and was arrested after being called from there but however, it is again pertinent to mention here that he hasn't led even an iota of evidence on the record to substantiate the afore-said fact nor has disclosed the detail of the domestic/personal work for which he claimed to have gone to Delhi. Further, although he has stated that he was getting treatment from PGIMER for some ailment and had visited there much prior to the day of the alleged occurrence but again, the fact remains that he hasn't even disclosed the dates of his arriving at and leaving Chandigarh after his treatment. Rather, there are categorical depositions of the above-named PW-11, PW-12 and PW-13 regarding his (appellant's) having been arrested from the round-about near Sector 26, Chandigarh on the same day. These facts falsify the above-said plea of '*alibi*' as taken by the appellant to show his innocence in this case.

11. Thus, it stands duly proved on the record that Sabia had died due to the injuries sustained by her while she, along-with the appellant, was staying in the house of the complainant-informant (PW-11), for his (appellant's) medical treatment and the appellant was found missing from the room where he and the deceased had slept on the previous night. The recovery of the blood stained earth and axe from the said room as well as the factum of the appellant having been arrested from Chandigarh on the

same day, also stand established in view of the specific depositions of PW-11, PW-12 and PW-13 to this effect. As per the report of the CFSL, i.e Annexure P-73, the blood stained shirt of the appellant, which was taken into possession vide the Seizure Memo Exhibit P-7, was having the stains of the human blood of Group 'O', i.e the blood group of the deceased. The deceased and the appellant were having a disturbed matrimonial life as the appellant had been suspecting that the deceased was having extra-marital affair. All the above-discussed facts and circumstances unequivocally lead to the only irresistible conclusion that the appellant had committed the murder of his wife, i.e the deceased.

12. As a sequel to the fore-going discussion, it follows that the impugned judgment and order on sentence, as passed by the trial Court, do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

28.04.2022
seema

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes