

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-331-DB-2018
Date of Decision:- 04.02.2022

RAKESH

.....Appellant

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harkesh Manuja, Advocate with
Mr. Kanwar Abhay Singh, Advocate,
for the applicant/appellant.

Mr. Vivek Saini, Addl. A.G, Haryana.

PANKAJ JAIN. J.

By this appeal challenge has been laid to judgment dated 07.03.2018, whereby the appellant has been convicted for offence punishable under Section 302 IPC and order dated 13.03.2018, whereby he has been sentenced to undergo RI for life and fine of Rs.10,000/-.

FIR No.560 dated 14.10.2016, was registered on complaint made

by one Baljeet Singh son of Siri Bhagwana, resident of village Jassaur Kheri. As per the complainant, he is living in house adjacent to the house of accused Rakesh, who got married to Renu (since deceased) in the year 2001. Out of their wedlock, they have two children. Accused Rakesh was having suspicion on the fidelity of Renu, therefore, she was residing separately at Delhi for the last many years. On 19.09.2016, Renu came from Delhi to the house of accused Rakesh at village Jassaur Kheri. Renu used to take liquor daily. On this issue, some quarrel took place between accused Rakesh and Renu occasionally. On 14.10.2016, at about 12:30 pm, the complainant was present at his home and on hearing the noise from the house of accused Rakesh, he went inside the house. In mean-time, Sandeep S/o Ram Chander R/o Village Jassaur Kheri also reached there and they saw that accused Rakesh and his wife Renu were fighting on the bed in the room and suddenly, accused Rakesh gave a sharp-edged DARANT blow on the back of the head of his wife Renu. As a result, Renu fell down on the bed. Accused Rakesh gave another blow of DARANT on the neck of Renu. The complainant and Sandeep tried to catch hold of accused Rakesh, but accused Rakesh fled away from the spot with the said weapon. When they tried to take care of Renu, they found that Renu has succumbed to the injuries.

The accused was chargesheeted for commission of offence punishable under Section 302 IPC and put to trial. Prosecution led the following evidence to prove guilt of the accused:-

PWs	Name
PW1	Baljeet Singh
PW2	Sandeep
PW3	Ramesh Kumar
PW4	Nirmala
PW5	Kamal Dutt
PW6	Krishan Kumar
PW7	Neetu
PW8	ESI Surender Kumar
PW9	EASI Jai Chand
PW10	EHC Ramesh Kumar
PW11	ASI Ramesh Kumar
PW12	Dr. Aakriti Hooda
PW13	Constable Rakesh
PW14	Constable Ashok Kumar
PW15	P/SI Sunil Kumar
PW16	ASI Devender Singh
PW17	SI Randhir Singh

Exhibits	
Ex.PW1/A	Statement dated 14.10.2016 of complainant Baljeet Singh.
Ex.PW2/A	Statement dated 14.10.2016 of Sandeep recorded under Section 161 of Cr.P.C.
Ex.PW3/A	Statement dated 14.10.2016 of Ramesh recorded under Section 175 of Cr.P.C.
Ex.PW3/B	Statement dated 14.10.2016 of Ramesh recorded under Section 161 of Cr.P.C.
Ex.PW3/C	Statement dated 16.10.2016 of Ramesh recorded under Section 161 of Cr.P.C.
Ex.PW3/D	Recovery memo dated 14.10.2016 of piece of bed-sheet.
Ex.PW3/E	Disclosure statement dated 16.10.2016 of accused Rakesh.
Ex.PW3/F	Recovery memo dated 16.10.2016 of DARANT.
Ex.PW3/G	Sketch dated 16.10.2016 of DARANT.
Ex.PW4/A	Statement dated 15.10.2016 of Nirmla recorded under Section 161 of Cr.P.C.
Ex.PW5/A	Statement dated 15.10.2016 of Kamal recorded under Section 161 of Cr.P.C.
Ex.PW6/A	Statement dated 14.10.2016 of Krishan recorded under Section 175 of Cr.P.C.
Ex.PW6/B	Statement dated 14.10.2016 of Krishan Kumar recorded under Section 161 of Cr.P.C.
Ex.PW7/A	Crime Scene Visit Report dated 15.10.2016 prepared by PW7 Neetu, Sr. Scientific Officer.
Ex.PW8/A to Ex.PW8/F	Photographs of the dead-body deceased Renu.
Ex.PW9/A	Scaled site-plan dated 23.10.2016 of place of occurrence.
Ex.PW10/A	Application dated 14.10.2016 for conducting Post-mortem of deceased Renu.
Ex.PW10/B	Recovery memo dated 15.10.2016 of the sealed parcels of the clothes of the deceased.

Ex.PW11/A	Affidavit dated 21.1.2017 of ASI Ramesh Kumar.
Ex.PW11/B	Copy of the relevant page of Register No.19.
Ex.PW12/A Ex.PW12/B	Inquest Report dated 14.10.2016. Post-mortem report dated 15.10.2016 of deceased Renu.
Ex.PW12/C	Affidavit dated 21.7.2017 of Dr. Aakriti Hooda.
Ex.PW12/D	Application dated 24.10.2016 seeking opinion of the doctor as to whether the injuries on the person of the deceased could be possible with DARANT.
Ex.PW12/E	Opinion dated 24.10.2016 of the doctor.
Ex.PW13/A	Affidavit dated 27.1.2017 of Constable Rakesh
Ex.PW15/A Ex.PW15/B	FIR No.560 dated 14.10.2016. Endorsement dated 14.10.2016 made by PW15 P/SI Sunil Kumar on Ex.P17/A.
Ex.PW17/A	Endorsement dated 14.10.2016 made by PW17 SI Randhir Singh on Ex.PW1/A.
Ex.PW17/B	Rough Site plan dated 14.10.2016 of the place of occurrence.
Ex.PW17/C	Rough site plan dated 16.10.2016 of the place of recovery of DARANT.
Ex.PX& Ex.PX/1	FSL Reports dated 19.04.2017.
Ex.P1	DARANT
Ex.P2	Piece of Bed-Sheet
Ex.P3	Black printed top
Ex.P4	Gray printed lower
Ex. P5 & Ex. P6	Black Bangles

Accused when examined under Section 313 Cr.P.C denied the allegations but did not lead any oral evidence. He relied upon the following documents in his defence:-

Ex. DA	Copy of complaint dated 26.09.2015 under Section 340 of Cr.P.C. against Renu
Ex.DB	Copy of order dated 17.04.2017 passed in the said complaint
Ex. DC	Copy of Petition of HMA titled Rakesh Vs. Renu
Ex. DD	Affidavit of Rakesh
Ex. DE	Statement of Renu

During trial, witnesses namely PW1-Baljeet Singh and PW2-Sandeep turned hostile.

Trial Court after examining the evidence, came to the conclusion that there was strong circumstantial evidence against the accused. Further, since the death of deceased occurred in the house of accused, he was required to explain the unnatural death of his wife involving Section 106 of the Indian Evidence Act, 1872. Trial Court held that from the circumstantial evidence, the prosecution has been able to prove beyond reasonable doubt that complete chain of events and circumstances, which points to the involvement and guilt of the accused.

We have heard, learned counsel for the parties and perused the records carefully.

Mr. Harkesh Manuja, Advocate while assailing the finding of conviction recorded against the appellant contends that since the alleged eye-witnesses having turned hostile, there is no evidence on record which can be relied upon to sustain the findings against the accused. He further states that the solitary link is the recovery of DARANT i.e. allegedly the weapon of offence said to have been made on the disclosure of the appellant but the same is a weak piece of evidence. He asserts that as per the evidence on record, the recovery of DARANT cannot be relied upon as

the possibility of tampering with the same cannot be ruled out. He has taken us to the testimony of Ramesh Kumar, ASI, PW11/A who was posted as Moharir at Police Station Sadar Bahadurgarh, which reads as under:-

“Stated that I have been posted as Malkhana Moharir in Police State Sadar, Bahadurgarh since September, 2016. The malkhana of the police station is under my supervision. I tender in evidence my duly sworn affidavit Ex. PW11/A alongwith photocopy of relevant page of register No.19 Ex.PW11/B. Ex. PW11/A and Ex. PW11/B be read as part of my statement.

Affidavit of Ramesh Kumar ASI No.833 P.S. Sadar Bahadurgarh.

1. I solemnly state that on 14-10-16, I was posted as Mohrar at P.S. Sadar Bahadurgarh.

2. That on 14-10-16, the I.O. deposited following parcels in the Malkhana. (1) One parcel of blood stained piece of bed sheet appended with seal of R.S. On 15-10-16 (2) One parcel of clothes of PMR 312/GH/BG/2016 appended with the seal of doctor. (3) One envelope containing papers appended with seal of doctor (4) on 16-10-16, one parcel of DARAT appended with seal R.S. with sample seal.

3. That above mentioned parcels were handed over to Ct. Rakesh No.1461 for depositing the same with FSL Madhuban vide RC No.349 dated 28-10-16.

xxxxxxx by the accused through counsel Sh.O.K. Hooda.

It is incorrect to suggest that I have sworn a false affidavit. It is incorrect to suggest that the seals of the case property were tampered with by the Investigating Officer frequently when it was in my custody. It is incorrect to suggest that I have deposed falsely.”

From the testimony of Ramesh Kumar, it is evident that as per him, parcel of DARANT was deposited in malkhana on 16.10.2016 in his custody. He handed over the same to Constable Rakesh No.1461 for

depositing the same with FSL Madhuban vide RC No.349 dated 28.10.2016. He states on oath that from 16.10.2016, the parcel of DARANT remained in his custody till 28.10.2016. Mr. Manuja, argues that when the aforesaid deposition of Moharir Rakesh Kumar is jointly read with the deposition of PW17-Randhir Singh, SI, the tampering of DARANT cannot be ruled out. Randhir Singh PW17 has stated that on 24.10.2016, he took the parcel of the DARANT from the Malkhana Moharir, scribed application Ex. PW12/D and moved the same before the Medical officer, who conducted the post mortem examination on the dead body of Renu and sought his opinion as to whether injuries on the dead body of Renu could be possible by that DARANT. After perusing the post mortem report, unsealing the parcel of the DARANT and perusing the same, the Medical Officer gave his opinion Ex. PW12/E. After re-sealing the parcel of the DARANT, it was handed over to him by the Doctor, which he deposited with the Malkhana Moharir. He argues that the major discrepancies in the statement of both PW11 and PW17 rather makes the recovery doubtful.

Mr. Vivek Saini, Additional Advocate General Haryana, on the other hand points out that recovery of DARANT on the basis of disclosure statement made by the accused fully nails the guilt of accused as the blood found on the handle of DARANT has matched the blood on the clothes of the deceased and the same stands proved by FSL report Ex. PX.

Rebutting the aforesaid argument, Mr. Harkesh Manuja, Advocate states that the FSL report cannot be relied upon as the same has not been formally proved by examining the author thereof. He states that

prosecution gave up PW Director, FSL Madhuban, while closing the prosecution evidence, thus the FSL report having been proved on record cannot be looked into.

The objection raised by counsel for the appellant to the admissibility of FSL report in the absence of formal proof sans merit. Prosecution has placed on record original FSL report and the same needs no formal proof and is per se admissible in terms of Section 293 Cr.P.C.

We find force in the second argument raised by Mr. Manuja. The link in the form of recovery of DARANT cannot be relied upon as the major discrepancy in the evidence of prosecution raises serious doubt. From the testimonies of Moharir and IO, recovery of DARANT itself has become doubtful.

In our considered view before Section 106 of the Evidence Act could be attracted, prosecution is required to prove prima facie case against the accused. Admittedly, whole of the case is based on circumstantial evidence. The link evidence in the form of DARANT is suspicious and cannot be relied upon.

It is settled law that the circumstances from which the conclusion of guilt is to be drawn, should be fully established. The facts so established should be consistent with the hypothesis of guilt of the accused. Prosecution should be able to prove beyond reasonable doubt the complete chain of events and circumstances. Once the link evidence in shape of DARANT is found to be doubtful, the benefit thereof must go in favour of accused.

Resultantly, appeal is allowed. Accused stands acquitted.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

04.02.2022
Amandeep

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No