

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

**CRM-A-1624-MA-2015
Date of Decision:- 01.09.2022**

State of Haryana

.....Appellant

Versus

Hans Raj and another

.....Respondent

**CORAM:- HON'BLE JUSTICE MS. RITU BAHRI
HON'BLE JUSTICE MS. NIDHI GUPTA**

**Present:- Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. Saurabh Mago, AAG Haryana for the appellant-
State**

Mr. Saurabh Dalal, Advocate for the respondents.

NIDHI GUPTA, J.

Application for leave to appeal was filed on behalf of State of Haryana against judgment of acquittal dated 27.3.2015 passed by the Additional Sessions Judge, Jhajjar in favour of the accused-respondents herein, in case FIR No. 01 dated 01.01.2010 registered under Sections 302/34 IPC and Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 at PS Jhajjar. Trial Court record was summoned and perused by this Court before issuing Notice of motion in the matter on 7.4.2016.

Briefly, the facts of the case are that on 1.1.2010 a

telephonic message was received in Control Room, Jhajjar that the dead body of an unknown girl was found on the railway track near Village Kheri Khumar. On receipt of information, SI Krishan Kumar along with HC Ram Kishan, Lady Constable Sushila Devi and Driver Karan Singh reached the spot, where many private persons were already present. Dead body could not be identified by anyone present. SI Krishan Kumar directed LC Sushila Devi to conduct personal search of the dead body whereupon a suicide note was recovered from the deceased from which it was discovered that the deceased was Renu, daughter of Har Sarup resident of Ravi Dass Mohalla, Dadri. Thereafter, the police informed the parents of the deceased upon which Har Sarup, father of the deceased alongwith Satbir and Surender came to the spot and identified the dead body of Renu.

Thereafter, Har Sarup got his statement recorded that he is retired SI from CRPF and he had four daughters one of whom was Renu, who was educated upto M.A.,B.Ed., and was teaching in a private school namely Diamond Valley School at Achina Taal. On 31.12.2009 when his daughter did not come back from school he searched for her and asked her friend Anita who informed him that Renu had not come to school that day. On 1.1.2010 at about 11.45 a.m., he received this message from the police that one dead body was lying on the railway track near Village Kheri Khumar, Jhajjar whereafter he reached the spot alongwith Surender and Satbir and identified his daughter Renu. He read the contents of the suicide note written by his daughter Renu.

In the suicide note it was written that on 31.12.2019 at about 8 a.m., when Renu had left her home to go to school, she met one

Saroj near the street of Dariyao Singh Advocate and a car was parked there. Saroj pushed Renu in the car and one Sri Bhagwan, and Sombir both residents of Village Rawaldhi and one other unknown person were present in the car who dragged her inside the vehicle. It was written that all the above persons also forced Renu at pistol and knife point to make a telephonic call to her friend to tell her that she would come late to school that day on the pretext that she had not received the vehicle. Then all the three persons committed rape upon her and stated that girls of 'Chamar' community were meant for this only, and that they belonged to upper caste and no one could harm them. It was further written that because of this mishap Renu could now not show her face to anyone, and therefore she was going to commit suicide, and all the above mentioned four persons were responsible for her suicide.

On the basis of this statement FIR 1 of 1.1.2010 was registered under Section 376 (g), 306, 120-B IPC, and Sections 3 and 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Investigations were carried out by SI Krishan Kumar. During investigation, on the basis of statement of one Saroop Singh, before whom the respondent No. 1 herein had allegedly made an extra judicial confession, police filed charge sheet against both the accused persons (respondents herein) before the Magistrate's Court, which was committed to the Court of Sessions after compliance of Section 207 Cr.PC and supplying copy of challan to the respondents, free of cost.

Vide order dated 4.12.2010, Charges were framed against both the accused persons under Section 302/34 IPC for committing

the murder of deceased Renu by strangulation; and Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 for humiliating the deceased. Both the respondent-accused pleaded not guilty and claimed trial.

Thereafter the prosecution in order to prove their case before the Trial Court examined as many as 38 prosecution witnesses, and relied upon extensive documentary evidence to prove their case.

Statements of the accused under Section 313 Cr.P.C., was also recorded wherein they denied all the evidence produced against them and stated that they were innocent and had been falsely implicated in the case at the instance of Sri Bhagwan and Sombir, the persons who had been named in the suicide note.

No witness was examined by the accused respondents in their defence.

On the basis of all the evidence, as well as statements and testimonies of various witnesses, and the substantial material placed before the trial Court, the learned Additional Sessions Judge vide impugned order held the respondents not guilty, primarily on the ground that the case of the prosecution was based on circumstantial evidence, there were glaring lacuna in the investigation conducted by the police, and the case set up by the prosecution was weak. Accordingly, learned Additional Sessions Judge, Jhajjar dismissed the appellant's case, against which the present appeal has been filed.

Learned counsel appearing for the appellant-State has inter-alia, submitted before us that the learned trial Court has failed to

correctly appreciate the evidence placed before it as well as had not properly considered the statements of various prosecution witnesses in its correct light.

Learned State counsel especially placed reliance on the extra-judicial confession purported to have been made by respondent no.1 Hansraj before PW34 Saroop Singh, and duly corroborated by PW-35 Balwan Singh, DSP, wherein Hansraj had confessed that because of his enmity with Sri Bhagwan Dangi, Sombir, Saroj and one other person, he had falsely involved these abovesaid persons in a murder case in order to take revenge on them. Hansraj is further stated to have confessed that for this purpose of extracting revenge, he, along with his wife Suman (respondent no. 2 herein), had called deceased Renu to their house on the pretext that they would give her a 'handicap certificate' issued from Jhajjar hospital. It was alleged that Hansraj had confessed that after luring the deceased like this, they had given her intoxicating tablets in milk and then killed her by strangulating her, whereafter, they (the respondents) had prepared a suicide note implicating Bhagwan, Sombir, Saroj and one other person in the murder. Ld. Counsel stated that therefore, the guilt of the respondents was established beyond doubt.

Ld. Counsel further stated that the truthfulness of this confession is proven from the fact that PW-32 Sombir and PW-33 Sri Bhagwan, both persons who were named in the suicide note, had also deposed regarding the respondents' enmity with them, and therefore revenge motive on part of respondents was proven.

State counsel also stated that learned trial Court was in

error in rejecting the recoveries made from the accused respondents in pursuance of their disclosure statements.

On the other hand, learned counsel for the respondents stated that the order of the Id. trial Court suffered from no error as the prosecution case was based purely on circumstantial evidence and they had failed miserably to establish their case. It was contended that the evidence clearly showed that the respondents had been falsely implicated in the matter and the real culprits had been shielded and wrongly given a clean chit. Ld. Counsel pointed out several glaring lacuna in the investigation, and contradictions in the depositions of the witnesses, as well as the evidence placed on record. It was accordingly stated that the whole case against the respondents could not be sustained, and prayed that the State's appeal be dismissed.

We have heard learned counsel for the parties, and with the able assistance of the Id. Counsel for the parties, have gone through the Lower Court Record in minute detail, including the depositions of all the witnesses, as well as the evidence on record. In our considered view there is no error in the order passed by the Id. trial Court, as there is no doubt that the case against the respondents is not proven beyond reasonable doubt as required under the law. The prosecution case is based wholly on circumstantial evidence, there are glaring, unexplained loopholes in the investigation, and it is clear that the prosecution has concocted the whole story against the respondents, as is evident from the following discussion:

The genus of the present case is the suicide note Ex.

PW2/G recovered from the body of the deceased Renu, on the basis of

which note statement of father of the deceased PW2 Har Sarup was recorded, on basis of which statement FIR was registered. Admittedly, following persons - namely Sri Bhagwan Dangi, Sombir Rawaldhi, Smt. Saroj, and one other unknown person - have been named in the suicide note and very serious allegations have been made against them, to the effect that these persons had committed rape upon the deceased and humiliated her which compelled her to commit suicide. It has been categorically stated in the suicide note Ex. PW2/G that the aforestated four persons were responsible for the death of Renu/deceased. However, a perusal of the record shows that no action whatsoever has been taken against four persons aforementioned in the suicide note, they have not even been investigated by the police, let alone brought to trial. The record provides no information whatsoever regarding what investigation if any, was carried out against these persons named in the suicide note, or why they were exonerated, or on what basis their names were dropped. Even during arguments no viable or tenable explanation has been given by the prosecution/ Appellant State as to why this is so. No doubt, this is a serious and vital defect in the investigation, and weakens the case sought to be brought by the prosecution against the respondents.

In this regard the findings of the Id. Trial Court in para 11 of the impugned order are imperative and may be noticed as such:

‘11. PW 21 Surender stated that on 5/6.1.2020, he visited office of S.P. and S.P. Saurav directed one of the police officer to record statement of PW21 and after recording the statement, police

officer was directed to release the suspect Sri Bhagwan and Sombir. PW33 Sri Bhagwan, the suspect named in the suicide note himself admitted in his cross-examination that he and Sombir were sent to jail for one day after arresting them. On the other hand, PW32 Sombir, the other suspect named in the suicide note stated that police met him, Smt. Saroj and Sri Bhagwan at Bus Stand, Dadri on 10.8.2010. The name of the police official was SI Dharambir. PW 32 further stated that before 10.8.2010 and after that police never met them. PW32 further stated that he never visited police station in this case. PW29 SI Dharambir deposed that he did not arrest the suspect named in the suicide note but he made the enquiry about them in the month of March,2010. PW29 further stated that prior to him, no police official had called Sri Bhagwan, Sombir and Smt.Saroj for investigation and had not arrested them and they were found innocent on the basis of CDR and location on their mobiles. PW29 has not filed the details of said CDR to substantiate the innocence of three said suspect named in the FIR. Thus, all the evidence on record clearly

shows the sheltering of real culprits named in the suicide note and false implication of the present accused persons facing trial.”

Furthermore, the respondents have been roped into the picture only on the basis of one extrajudicial confession alleged to have been made by respondent No.1 on 14.5.2010 before PW-34 Saroop Singh and alleged to have been recorded by PW-35 Balwan Singh Rana, DSP as PW35/A. In this regard, it is necessary to bear in mind that the said extrajudicial confession was not signed by Saroop Singh and is thus, hit by Section 35 of the Evidence Act as any confession made before the police is inadmissible. Moreover, there is nothing on record to suggest that PW34 Saroop Singh was close and fast friend of respondent no.1-Hans Raj which would inspire Hans Raj to suddenly confide to PW 34 Saroop Singh. Thus, in our view, this extrajudicial confession constitutes a weak piece of evidence.

However, in the absence of any eyewitness to the incident, this extrajudicial confession forms the backbone of the case set up by the prosecution against the respondents; as per which respondent no. 1 is supposed to have confessed to committing the crime/ killing Renu deceased, in order to take revenge against the persons named in the suicide note. Besides the fact that this story put up by the prosecution is too far fetched and implausible – in that that it belies belief that the respondents would resort to such extreme measures as to kill Renu just to extract revenge on Sri Bhagwan and Sombir - there is even otherwise, nothing on record to suggest that the respondents had any kind of enmity or dispute

with deceased Renu which would cause them to take such an extreme step as to kill her. Therefore, in the absence of any enmity with the deceased, which is not even alleged, it is clear that the respondents had no motive to eliminate her. As stated above, the purported motive assigned to the respondents on behalf of the prosecution that they committed this crime because they wanted to settle their score with Sri Bhagwan and Sombir etc., is tenuous and unconvincing at the least. Thus, no motive is proved against the respondents.

Even otherwise, there are enough judicial pronouncements where the prosecutorial sanctity assigned to extrajudicial confessions has been considered and outrightly rejected by the Hon'ble Supreme Court as well as this Court.

In this regard reference may be made to the decision of Hon'ble the Supreme Court in case of '**Munna Kumar Upadhyaya @ Munna Upadhyaya v. State of A.P. Tr. Pub. Prosecutor**' (SC) : Law Finder Doc Id # 357849, wherein Their Lordships have noticed as follows:

“35. In **Balwinder Singh v. State of Punjab**, [1995 Supp. (4) SCC 259], this Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

36. In **Pakkirisamy v. State of T.N.**, 1997(4) RCR (Criminal) 441 : [(1997)8 SCC 158], the Court held that it is well settled that it is a rule of

caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

37. Again, in **Kavita v. State of T.N., 1998(3) RCR (Criminal) 555 : [(1998)6 SCC 108]**, the Court stated the dictum that there is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.”

Moving on, most importantly, as per the prosecution version, death of Renu deceased was caused due to strangulation by the respondents. However, medical evidence in this regard does not support the story put up by the prosecution. PW 13 Ms. Neetu, Senior Scientific Assistant, FSL Madhuban, in her cross examination has categorically stated that there were no ligature marks or any external mark of strangulation on the neck of the deceased. Her cross examination is as under:-

“I visited the place explained above at about 10.00 a.m. The police officials were already there. I was called on by the Investing Officer at the place of occurrence. The police officials were approximately 5-10 in number but exactly I can not tell the number of police officials. *I had inspected the dead body of Renu thoroughly. It is correct that there was no ligature mark on the*

neck. It is correct that there was no external mark of strangulation. It is correct that investigation officer had already taken the possession of the suicide note prior my visit. It is incorrect to suggest that I prepared false report at the instance of investigating officer.”
(Emphasis supplied)

Therefore, the prosecution story of strangulation is not corroborated by the undisputed medical evidence on record.

Prosecution story of death by strangulation is further belied by the testimony of PW-19 Dr.Amit Chaudhary, Medical Officer, General Hospital, Jhajjar who, on the basis of FSL Report Ex.PW19/F has opined that the cause of death of Renu was due to administration of aluminum phosphide. FSL Report Ex.PW19/F clearly shows the presence of aluminum phosphide in the small and large intestine, stomach, lung, liver, spleen, kidney of the deceased. Thus the whole story of the prosecution that the deceased was killed by respondents by strangulating her and thereafter allegedly showing her suicide by keeping tablets of aluminum phosphide on her tongue are planted as, as per the relevant medical findings on record, the aluminum phosphide had completely circulated in the body of the deceased through elementary canal, leading to her death. FSL Report clearly corroborates the version of suicide note where deceased has stated that she was taking celphos for killing herself.

Another serious lacuna in the prosecution case is that the original suicide note has not been produced and only a photocopy of the suicide note was produced before the trial Court as Ex. PW2/G. It has been stated by the prosecution that only photocopy of the suicide note was

recovered from the body of the deceased. However, both the seizure memo of the suicide note Ex.PW2/B, and complaint Ex.PW2/A, are silent regarding recovery of a 'photocopy' of the suicide note instead of original. Even the inquest proceedings are silent that only a photocopy of the suicide note was recovered. Therefore, a vital link in the case of the prosecution is missing, which raises serious questions regarding the sanctity and integrity of the investigation carried out by the police in this case.

It is also important to note that immediately after recovery of the suicide note from the body of the deceased Renu it was not countersigned by any eyewitness nor was the same kept in sealed cover, nor deposited in Malkhana. Thus, substitution of the suicide note by planting a photocopy of the original suicide note, to shield the real culprits, cannot be ruled out. PW-26 Om Singh, retired DSP categorically admitted in his cross examination (at page 165 of the LCR), that original suicide note was recovered from the dead body of deceased Renu. It is thus clear that the concealment of original suicide note by the police during investigation and replacing it with a photocopy of the same falsifies the case of the prosecution.

Further, it has also been alleged by the prosecution that after killing Renu, the respondents had fabricated the suicide note incorporating therein the names of Shri Bhagwan, Sombir et cetera with whom the respondents had enmity, in order to implicate them in the murder. Accordingly, to test the truthfulness of this allegation the specimen handwriting of the respondents along with admitted handwriting of the deceased were sent to FSL Madhuban. As per report of Handwriting

Expert, FSL Madhuban, Ex.PX, it has been categorically stated therein that the writing in the suicide note, marked Q1, was not that of the respondents. The relevant portion of report Ex. PX submitted by Deputy Director, FSL, Madhuban is as under:-

“Opinion-2: It has not been possible to fix the authorship of questioned writings marked Q1 in comparison with specimen writing marked S1 to S3 stated to be of 'Suman'; marked S4, S5 (stated to be of Hansraj).”

Therefore, the prosecution case is falsified regarding fabrication of the suicide note by the respondents in order to implicate the above said Sri Bhagwan and Sombir.

Another discrepancy is that PW-35 Balwan Singh, DSP and PW-34 Saroop Singh had deposed that Saroop Singh had produced the accused. However, PW-24 ASI Bijender Kumar stated that on 14.5.2010 DSP had apprehended the accused but he could not remember the place from which the respondents were arrested. In contradiction of the above, PW-34 Saroop Singh deposed that he alongwith respondent Hans Raj had reached the office of DSP. As such, there are irreconcilable loopholes in the case put up by the prosecution.

Regarding the alleged disclosure statement made by respondent no.1, which is Ex.PW24/B, it has been alleged that respondent no.1 offered to recover the Voter ID and passbook of deceased Renu which he is stated to have kept concealed in his rented house in Village Satnali. It is the case of the prosecution that on the basis of this alleged disclosure statement Ex. PW24/B that recovery was effected on 18.5.2010. However,

PW20 Puran Singh in his cross examination has specifically stated that Hans Raj did not get any Voter Card or passbook recovered and the said documents were in the hands of police. Cross examination of PW20 Puran Singh is as under:-

“I do not know the name of the owner of the house. I was outside the house and I was called by the police. *It is correct that Hans Raj did not recover the Voter Card Ex.P-1 and Pass Book Ex.PW2/J. The above said documents were in the hands of Police.* Accused Hans Raj was with the police at the time who was present in the Court today. Owner of the house was not present. I do not know when police had come in that house. *I had seen the Identity Card and Pass Book in the hands of the police at the spot.* Police obtained my signatures only one document. One SI of the Satnali also signed on the documents and two or three police officers had also signed on the documents. Only I was the witness from the Village Satnali and public was standing outside the spot. The lady who was alleged to be aunt of the house owner had not signed on the recovery memo. The lady owner of the house met me and she told me that police had asked her to become witness of the recovery of the Chain and Ring. She had refused to the police to become the witness of the recovery of Chain and Ring. It is incorrect to suggest that my signatures were obtained on blank papers. Volunteered stated that police has obtained my signatures on written papers in which contents relating to the recovery of Voting Card and Passbook were mentioned. It

is incorrect to suggest that I am deposing falsely qua the said facts. I am Matric pass. I did not tell to the police why writing work has been done without my consent. It is incorrect to suggest that I am deposing falsely.” (Emphasis supplied)

Even otherwise, there is nothing on the record to support that the said Voter card or passbook were in possession of Renu before her death. In fact, in normal circumstances it would be odd to go to work with such important identification documents.

Even PW-27 Inspector Jugal Kishore, SHO has stated that he did not remember as to what was the recovery from the house of the respondent no.1-Hans Raj, and the lady owner of the house Birmati had told him also that the police asked her to become witness to recovery of Chain and Ring but she had refused.

Furthermore, the alleged recovery of Chain and Ring at the instance of Suman, respondent no.2 also seems doubtful as there is nothing on record to suggest that the deceased was wearing said Chain and ring at the time of her murder. Moreover, a perusal of these objects show that they are inexpensive and easily available, and could have been planted and recovery thereof at the instance of respondent No. 2 does not provide any proof, let alone conclusive evidence.

Even further the prosecution failed to prove the taking of the tyre prints of the Maruti Van belonging to respondent No. 1, and the same were not filed with the police challan either. In any case comparison of the tyre prints of Maruti van belonging to respondent No. 1, with the

Maruti Van tyre prints found at place of occurrence cannot constitute

foolproof evidence as the tyre prints of a particular company of a specific brand would be identical being manufactured from the same mould. The only distinct characteristic mark can be particular wear and tear of a particular tyre which is not so in the present case. Therefore, a report based on probability cannot be relied upon.

From the above narration it is clear that the whole case of the prosecution against the respondents is based on circumstantial evidence. In this regard the observations of the Hon'ble Supreme Court in case of '**Chattar Singh v. State of Haryana**', (SC) : Law Finder Doc Id # **145459**, are valuable:

“5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See **Hukam Singh v. State of Rajasthan**, (AIR 1977 Supreme Court 1063); **Eradu and Ors. v. State of Hyderabad**, (AIR 1956 Supreme Court 316); **Earabhadrapa v. State of Karnataka**, 1983(1) RCR (Criminal) 292 ; **State of U.P. v. Sukhbasi and Ors.**, (AIR 1985 Supreme Court 1224); **Balwinder Singh v. State of Punjab**, 1987(1) RCR (Criminal) 517 ; **Ashok Kumar Chatterjee v. State of M.P.** (AIR 1989 Supreme Court 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown

to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab, (AIR 1954 Supreme Court 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.”

From the facts narrated above, it is clear that the prosecution case is based solely on circumstantial evidence from which an inference regarding the guilt of the accused/respondents cannot be held to be ‘proved beyond reasonable doubt’ as required under the law. Moreover, the second leg on which the prosecution case stands, which is the extra judicial confession attributed to respondent No. 1, is also a weak piece of evidence as per law, and cannot form basis for conviction unless supported by other substantive evidence, which is lacking in this case.

Accordingly, in view of the above discussion the present appeal is dismissed and the order of acquittal dated 27.3.2015 passed by the learned trial Court is upheld.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

01.09.2022
Joshi