

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

**Criminal Appeal No. D-7 of 2019
Date of Decision: 13.09.2022**

Ashutosh Sharma

... Appellant

versus

State of Haryana

...Respondent

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

Present: Mr. Aditya Sanghi, Advocate
for the appellant.

Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana

RITU BAHRI, J.

This appeal has been preferred by the appellant against the judgment dated 07/08.12.2018 passed by the learned Addl. Sessions Judge-cum-Special Judge, Rohtak (herein after to be referred as 'the trial Court'), whereby he was convicted and sentenced under Section 302/201 IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Brief facts of the case as recorded by the trial Court reads as under:-

“ On 6.2.2016, a telephonic information was received from Control Room, Rohtak in the police post that on on Jasia road near Jasia Bypass, a dead body in a bag was set at fire, on which SI Shamsher Singh accompanied by HC Vedpal No.1618, EASI Ramesh Kumar and HC Jitender reached at the spot where Vijay son of Sher Singh, resident of village Sanghi, District Rohtak got recorded his statement to SI Shamsher Singh who stated that he had taken the lease of parking in Mini Secretariate. He was going to his village by his car No.HR-12-S-4570 mark

Polo after doing his duty, accompanied by Mandeep son of Rajender, resident of village Sanghi Pana Godan. At about 8:30 P.M., when he reached towards village Jasia at a distance of 1-1/2 killa, he found fire on the left side of the road, firstly hands and then legs in the light. He stopped his car. The dead body was burning. He went to nearby hotel where some people were sitting. He brought them on the spot who went away after seeing the same. He had telephoned in the police control room that some body had murdered some lady and in order to conceal the dead body, he might have fired at the dead body by putting the same in a bag by kerosene oil.

On the aforesaid statement, case under Sections 302, 201 of IPC was found. The case was registered and the investigation was carried out by SI Shamsheer Singh. The place of occurrence was photographed. The place of occurrence was also got inspected from FSL team and Finger Print team. Site plan was also prepared on 7.2.2016. The burnt pieces of bag, burnt photographs and pieces of cloth, earth and box of plastic white in colour were taken into police possession after converting it into parcel and sealed with the seal of 'SS'. The witnesses put their signatures. The seal was handed over to HC Vedpal after use. The statements of the witnesses were recorded. Deepak son of Nanha Ram, resident of village Lijwana Khurd, District Jind, Ramesh son of Tek Ram, resident of Ugalan, District Hisar reached dead house PGIMS, Rohtak due to publication in the newspaper for identity of dead body and through mobile phone on 7.2.2016. They identified the dead body as of Mukesh wife of Nanha Ram. The identification memo of the dead body was prepared. The witnesses put their signatures upon the memo. Proceedings under Section 174 Cr.P.C. was carried out. The dead body was subjected to autopsy from the post-mortem examination board. After post-mortem examination, HC Jitender had produced one parcel of viscera, one envelope, one parcel of bag, one parcel of burnt pieces of cloth, one parcel of anal swab and one parcel of vaginal swab smere, one parcel teeth and one parcel of belongings duly sealed by the doctor along-with sample seal belonging to deceased Mukesh and the papers thereof were produced before SI Shamsheer Singh, which were taken into police possession in the presence of witnesses after recording their statements. The doctor opined the cause of death as the injuries described head injuries described as serial no.1 to 3. All injuries were ante-mortem in nature. After post-mortem examination, the dead body was handed over to the members of the family of deceased for cremation. The case property was handed over to Malkhana Mohrar.

On 8.2.2016, statements of Pooja daughter of Nanha Ram, Deepak son of Nanha Ram, residents of village Lijwana Khurd under Section 161

Cr.P.C. were recorded who got recorded that their mother Mukesh used to talk on mobile No. 9467785053. The number was pertaining to Vijay Lata, resident of Julana. Their mother deposited money with Vijay Lata. His mother had gone at the house of Vijay Lata at Julana on 6.2.2016. Thereafter, on 10.2.2016, the call details record of mobile no.9467785053 dated 5.2.2016 to 9.2.2016 was obtained from ASI Amit No.1753 Cyber Cell, Rohtak. The mobile was in the name of Vijay wife of Satish Kumar, resident of Julana. After evaluation of CDR, it was found that son of Vijay Lata namely Ashutosh was found to be present on the place of incident as per location. CDR, mobile and mobile subscriber detail were taken into police possession in the presence of witnesses. Their statements were recorded. Accused Ashutosh Sharma son of Satish Kumar, resident of H.No.3, Ward No.7, Julana, P.S. Julana, District Jind was arrested on finding the evidence of his involvement and was put up in the police lock-up. On interrogation of the police on 14.02.2016, the accused got recorded his disclosure statement stating that Mukesh wife Nanha, resident of village Lijwana Khurd used to deposit Rs.1000/- per month. with his mother. She was known to him and his mother since 2013. She used to visit their house. She was a widow. She came at his residence on 6.2.2016 at about 12'0 clock. She sat with his mother for some time. His mother was ill. Mukesh returned back after 15 minutes. He made his mother to sleep. Mukesh came to his house again. He took Mukesh in bathroom and had raped her against her consent. When Mukesh threatened him about the activity of the accused, he had strangulated with the Dupata around her neck. She fell down on the ground and gave two brick blows in her head. She succumbed to the injuries. He packed the dead body in a bag and put in his car No.HR-31-G-9522 and took her dead body with a view to destroy by making excuse to his mother Vijay Lata that he was going to attend the marriage. He got the petrol plastic box from Bhagwati Filling Station, so that the dead body could be burnt. Thereafter, he had got issued the slip of arrival and departure from Makroli Toll Plaza at about 8:15 P.M. and he took the dead body to a secluded place near Jasia village old road and took out the dead body from the diggi of the car and placed it on the bank of the road and set the same at fire and returned back to his house. He offered to get the place of rape and murder of Mukesh by brick and also the place of burning of dead body for destroying the proof demarcated and he also offered to get the brick and the car by which the dead body was placed on the road of Jasia village in a secluded place recovered. The disclosure statement of the accused during police remand was recorded. The accused was medico-legally examined from Government Hospital, Rohtak.

After his medical examination, Constable Vedpal prepared

the parcel of papers along-with pubic hair and pubic swab along-with sample seal with one envelope sealed with seal RS along-with MLR dated 14.2.2016 produced before SI Shamsher Singh, which were taken into police possession in the presence of witnesses. Statements of witnesses were recorded. The further investigation was carried out by DSP Amit Dahiya. The accused got recovered the car, original RC, original DL as per his disclosure statement. The accused also got recovered the mobile phone, papers, brick which were taken into police possession by converting the same into separate parcels duly sealed with seal SS in the presence of witnesses. The site plan of the place of incident of rape and murder and places of recovery were prepared. The CD of car from Toll Plaza, Makrouli Kalan towards Jasia and return thereof was got prepared and was taken into police possession after converting the same to sealed parcel duly sealed with SS in the presence of witnesses. The case property was deposited in the Malkhana. The vehicle search report was produced by SI Shamsher Singh before DSP Amit Dahiya, which was taken to police possession in the presence of witnesses. The further investigation of the case was carried out by DSP Veer Singh. During investigation, the scheduled caste certificate of Mukesh wife of Nanha Ram was taken into police possession. The CD, pen drive and one CCTV DVR of Bhagwati Filling Station of village Bhagwatipur, Jind Road was produced before the police in the presence of witnesses.

After recording the statement of witnesses, the case property was deposited with Malkhana Mohrar. On 11.3.2016, HC Vedpal was sent with application for obtaining opinion as to the use of brick. HC Vedpal produced the report before DSP and the brick was handed over to Malkhina Mohrar. On 12.3.2016, SI Shamsher Singh got prepared scaled site plan and recorded the statements of witnesses. On 22.3.2016, DSP got the place of occurrence inspected from FSL team. On 11.4.2016, DSP obtained FSL report from Dr. Saroj Dahiya, Rohtak Unit. On 26.4.2016, the vehicle was got inspected from FSL team and report of FSL team was obtained. The case property was deposited for examination with FSL Madhuban. Accused Vijay Lata would be joined in further investigation if evidence was found against her then she would be arrested and her supplementary challan would be presented in the Court. After completion of usual investigation, the police found to proceed against the accused and as such, final report Section 173 Code of Criminal Procedure was submitted in the Court of learned Area Magistrate to face trial.

Copy of final under Section 173 Cr.P.C. along with accompanying documents was supplied to the accused free of costs as envisaged under Section 207 of the Code of Criminal Procedure and the case as committed

to the Court of Sessions.

The accused was charged for the commission of offence punishable under Sections 376, 302 and 201 of the Indian Penal Code and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to which, he pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, the prosecution examined twenty-seven witnesses, ie Vijay as PW1, Mandeep as PW2, Inspector Vijay Singh as PW3, Constable Rohtash Kumar as PW4, Constable Virender as PW5, EASI Preet Singh as PW6, Ram Sajiwan, WBN, Tehsil Julana as PW7, HC Vedpal as PW8, EASI Samit Kumar as PW9, Pooja as PW10, Deepak as PW11, Ramesh as PW12, Sanjay as PW13, ASI Amit Kumar as PW14, Dr. Dinesh Chillar as PW15, Dr. Saroj Dahiya as PW16, Hawa Singh as PW17, ASI Harender as PW18, DSP Amit Dahiya as PW19, ASI Manjeet as PW20, HC Virender Kumar as PW21, Dr. Ranvir Singh as PW22, Atul as PW23, Arun as PW24, SI Shamsher Singh as PW25, Veer Singh, ACP, Patodi as PW26 and Akhilesh Kumar as PW27. The learned Public Prosecutor after proving the relevant documents closed the evidence. CIS No.128 of 2015 State Vers Ashutosh

When the evidence was put to the accused while recording his statement under Section 313 Cr.P.C. in which the incriminating material was put to him in the form of questions and answers but he denied the version of prosecution case and pleaded that he never visited the toll plaza and the car No.HR-31-G-9522 was falsely implicated in this case to connect the case. No witness gave evidence against him regarding rape and murder. He is innocent and falsely implicated in this case to solve the murder case. No scientific evidence is present against him. However, the accused has tendered FSL report Exhibit D1 in his defence evidence.

The points of determination in this case are:

(i) Whether the accused after raping the deceased Mukesh had murdered her by using a brickbat on her head and he burnt the dead body of Mukesh by sprinkling diesel to destroy the evidence knowingly well, she was a member of scheduled caste community and committed the offence punishable under Sections 376, 302 and 201 of IPC and Section 3(2)(v) of SC/ST Act?

(ii) Whether the accused has succeeded in probabalising his defence?"

The trial Court after going through the entire evidence led by the parties held that it was the appellant who got effected the recovery of the car with documents and also got effected the recovery of mobiles, the

clothes he had worn at the time of commission of offence and also the brick used in the commission of offence vide recovery memos Ex P40 to P43 respectively and also demarcated the place of occurrence where he had raped and murdered Mukesh vide demarcation memo Ex P45 and further demarcated the place of destruction of body of Mukesh vide demarcation memo Ex P48. Further the appellant disclosed that he and his mother are the agents of the company and have made 250-300 members and the deceased was also one of the members at one point of time. On the date of occurrence, she had come to their house for depositing the installment and the appellant wanted to grab the money of the deceased. Thus, there was motive for her murder and then destruction of evidence by burning. Reference has further been made to examination of Dr. Dinesh Chillar, Medical Officer, Government Hospital, Gohana, Sonapat as PW15 who being a member of the board conducted post-mortem on the body of Mukesh wife of late Shri Nanha Ram proved post-mortem report Exhibit P25. He deposed that they had gone through inquest proceedings Exhibit P26 and he proved his duly sworn affidavit Ex P27. They opined that cause of death was head injuries and the injuries were ante mortem in nature. Burns described were post-mortem in nature. As per FSL report Ex P4, kerosene was found in the piece of cloth, piece of jute with ash and piece of jute (Bori). As per FSL report Ex P5 human semen was detected on slides and vaginal swabs. He opined that possibility of sexual intercourse with prosecutrix could not be ruled out before murder. They also opined that injury No. 1 and 2 mentioned in the post mortem report could be caused by the type of hard and blunt weapon and he proved their report Ex P13 by identifying his signatures and the signatures of other members of the Board.

Further the Autosomal STR analysis indicates that the DNA profile of semen stains on Source of Item No. 1A (Cotton swab) and Source of Item No. 1B (Slides) was not matching with the DNA profile of the appellant. Further as per search report Ex P36 the car bearing No. *HR-31-G-9522* crossed the toll plaza on 06.02.2016 at 8:14 p.m and returned back on on 06.02.2016 at 8:39 p.m. It has been held that all the circumstances shown by the prosecution carry no doubt in the mind of the Court so as to create any dent in the chain of evidence of the prosecution. The appellant was proved to be the author of the crime but nobody else other than the appellant who murdered the deceased and thereafter burnt her dead body so as to exonerate himself with the payment of money deposited with them by the deceased.

Learned counsel for the appellant is relying upon judgments of Hon'ble the Supreme Court of India in cases of *Satye Singh vs. State of Uttarakhand*, passed in Criminal Appeal No. 2374-2014, decided on 15.02.2022, *Nagendra Sah vs. State of Bihar*, 2021 (4) R.C.R (Crl) 180, *Parubai vs. State of Maharashtra*, passed in Cr. A. No. 1154-2018, decided on 10.08.2021 on the proposition that all the circumstantial evidence must lead to conclusion that accused is the only one who has committed crime and none else. The order of conviction merely on the basis of suspicion, conjectures and surmises is liable to be set aside.

The judgments relied upon by learned counsel for the appellant will not be applicable to the facts of the present case, as in the present case, it was the accused-appellant who got the recovery effected of the car along with documents used in the crime. The accused-appellant had also got effected the recovery of clothes he had worn at the time of commission of offence and also the brick used in the commission of offence vide recovery

memos Ex P40 to P43 respectively. Further in the present case, the complainant is a private person and does not belong to the accused nor to the prosecution. The accused in his disclosure statement has himself stated that he and his mother are the agents of the company and they have made 250-300 members and the deceased was also one of the members at one point of time. On the date of occurrence as well, the deceased came to the house of the accused for depositing the installment. The accused want to grab the money of the deceased and thus there was motive for her murder.

In view of the discussion made above, the appeal is dismissed.

(RITU BAHRI)
JUDGE

13.09.2022

G Arora

(MEENAKSHI I. MEHTA)
JUDGE

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