

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D No.60 of 2022 (O&M)
Date of Decision: 06.10.2023

Dalip Kumar and another ... Appellants
Versus
State of Haryana ... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Dr. Deepa Singh, Advocate,
for the appellants.

Mr. Sharan Sethi, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The instant appeal has been preferred against the judgment of conviction dated 27.10.2021 and order on quantum of sentence dated 29.10.2021 passed by the Court of learned Additional Sessions Judge, Palwal in Sessions Case No.50 of 2020 titled as *State v. Dalip Kumar and another* arising out of FIR No.512 dated 01.10.2019 registered under Sections 302, 201 and 34 of IPC at Police Station City, Palwal.
2. For the sake of convenience, the appellants-convicts shall be referred to hereinafter as accused.
3. The broad contours of the case as set up by the prosecution in this case are that on 01.10.2019, PW-4 Rahul noticed a black coloured bag wrapped with a nighty and a blanket lying in the street near his house. The bag was emitting foul smell and several persons had gathered around it. Information was immediately given to the police and on opening the bag, dead body of a female infant aged about one and half years was found lying in the bag. A case under Section 302 and 201 of

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IPC read with Section 34 of IPC was registered. Investigation proceedings were initiated. Inquest proceedings and postmortem examination of dead body was conducted and injuries were found on it. On the same day, Guddi w/o Babbal identified the dead body to be that of Juhi @ Durgawati, real daughter of accused Dalip and step daughter of accused Ritu who were staying as tenants in a room of the same house in which she herself was residing as a tenant. She recorded her statement that the nighty with which the dead body was wrapped was given by her to accused Ritu and the latter usually wore it. She also disclosed that on 29.09.2019, she had noticed both the accused in a state of panic and scare and on 01.10.2019, she had seen them leaving their room with a black coloured bag wrapped in a blanket. Their infant son was also with them. She raised suspicion that both the accused had killed the victim. The statement of Deepak, brother of accused Dalip Kumar was recorded on 02.10.2019 who identified the dead body of the victim. The accused were apprehended from railway road near Shekhpura Mohalla, Palwal on 05.10.2019. They were interrogated and suffered disclosure statements admitting the factum of killing the victim by beating her and also about wrapping her dead body in a black coloured bag and initially concealing the same in an almirah of their room and then throwing it at the place from where it was recovered. The accused Ritu demarcated the place of occurrence and got recovered a broom with which the victim was beaten. The accused Dalip also demarcated the place of occurrence. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

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4. Copies of challan were supplied to the accused free of cost. The case was committed to the Courts of Sessions. On finding a prima facie case for commission of offences punishable under Sections 302 and 201 of IPC read with Section 34 of IPC, the accused had been chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined 19 witnesses namely, **PW-1** Jagdish Baghel, Municipal Councilor, **PW-2** Guddi @ Guriya, **PW-3** Ravinder Singh Dahiya, Draftsman, **PW-4** Rahul, **PW-5** Dalip, **PW-6** Shailender, **PW-7** EHC Satish Kumar, **PW-8** Constable Sonu, **PW-9** Deepak @ Rahul, **PW-10** Dr. Sahil Sharma, **PW-11** Constable Ajay Kumar, **PW-12** Dr. Anil Kumar, **PW-13** Sher Singh, **PW-14** ASI Harpal Singh, **PW-15** Inspector Desh Raj, **PW-16** Inspector Rajesh Kumar, **PW-17** ASI Mahanand, **PW-18** Anju Bala and **PW-19** HC Raj Kumar besides placing reliance upon documentary evidence and thereafter the prosecution evidence was closed by learned Public Prosecutor.

6. The statements of accused were recorded under Section 313 of Cr.P.C. They abjured their guilt and claimed to be innocent. They were granted opportunity to lead evidence in defence but did not lead any.

7. On appraising the evidence produced on record and after considering the contentions raised by both the sides, the learned trial Court held the accused guilty of the charges as framed against them vide judgment dated 27.10.2021 and by order on quantum of sentence on 29.10.2021, they were sentenced to undergo rigorous imprisonment for life for commission of offence punishable under Section 302 read with Section 34 of IPC and to pay fine of Rs.10,000/- and in default of fine, they were further sentenced to

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undergo rigorous imprisonment for one year each. They were further sentenced to undergo rigorous imprisonment for a period of two years each and to pay fine of Rs.5000/- each for commission of offence punishable under Section 201 read with Section 34 of IPC and in default of payment of fine, were to undergo rigorous imprisonment for six months each. The substantive sentences were ordered to run concurrently.

8. Feeling aggrieved from the order of the conviction and sentence, the present appeal has been filed by the appellants-accused. It is submitted in the grounds of appeal and it was vehemently argued by learned counsel for the appellants that the impugned judgment and order were liable to be set aside as the findings given by learned trial Court were not sustainable in the eyes of law, the same being suffering from several material infirmities. The learned trial Court did not apply its judicious mind and had acted on surmises and conjectures. No motive on the part of the appellants to eliminate the victim had been established. There was no eye-witness to the occurrence. The case was based on circumstantial evidence and the circumstances as relied upon by the prosecution were not of such nature which unerringly pointed towards the guilt of the accused. With these broad submissions, it was urged that the impugned judgment and order were not sustainable and were liable to be reversed, the appeal deserved to be accepted and that the appellants deserved to be acquitted of the charges as framed against them.

9. Per contra, it was argued by learned State counsel that there was overwhelming evidence on record to prove that the victim who was infant daughter of the appellants had died a homicidal death at the hands of

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the appellants and her dead body had been thrown by them with an intention to cause disappearance of the offence of murder as committed by them. The circumstantial evidence as produced on record by the prosecution was of sterling quality which proved the guilt of the appellants beyond shadow of any reasonable doubt. The victim was step daughter of the appellant accused Ritu who was not of normal health and could not even speak or walk. No plausible explanation had come forward from the accused as to how and under what circumstances, the victim had gone missing and was not found in their custody. The appellants had miserably failed to discharge the onus as put upon them under Section 106 of Indian Evidence Act, 1872 (For short "Evidence Act"). Hence, it was argued that the appeal was devoid of any merits and it was urged that the same was liable to be dismissed.

10. We have heard learned counsel for the appellants and learned State counsel at considerable length and have minutely scrutinized the material placed on record of the learned trial Court.

11. The case of the prosecution is that on the night of 29.09.2019, the accused in furtherance of their common intention had committed murder of the victim and subsequently after wrapping her dead body in a black coloured bag, they had thrown the same elsewhere. Admittedly, there was no eye-witness of the murder and there is no direct evidence to pinpoint the accused. The entire case of the prosecution was based on circumstantial evidence. The well settled proposition of law qua the cases based on circumstantial evidence is that the Court is bound to be extra cautious because circumstantial evidence has its own limitations. It is equally well settled that circumstantial evidence is a best evidence if the chain of

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circumstances is proved without any missing link and the only presumption that can be drawn from it is that but for the accused, the crime was not possible in any manner. The Hon'ble Supreme Court has pronounced several celebrated judgments laying down guidelines with regard to the admissibility of circumstantial evidence. Some of which are **Sharad Biridhichand Sarda v. State of Maharashtra**, AIR 1984 SC 1622; **Hanumant Govind Nargundkar v. State of M.P.**, AIR 1952 Supreme Court 343 and **Padala Veera Reddy v. State of Andhra Pradesh and others**, AIR 1990 SC 79. The crux of these pronouncements is that before a case based on circumstantial evidence is said to be fully proved, it must be seen that the circumstances from which the conclusion of the guilt is to be drawn, should be fully established; the facts so established should be consistent only with the hypothesis of the guilt of the accused and not any other hypothesis; the circumstances should be of a conclusive nature and tendency; each fact must be proved individually and if from the combined effect of all the facts taken together for establishing the guilt of the accused, the conclusion should be justified even though it may be that one or more of those facts by themselves are not decisive. There must be a chain of evidence so complete as not to leave any reasonable doubt for conclusion consistent with the innocence of the accused. The legal position as to how such matters should be examined has been well expounded in another celebrated pronouncement of Hon'ble Supreme Court cited as **Mulakh Raj and others v. Satish Kumar**, AIR 1992 SC 1175 wherein it was observed as follows:-

“Undoubtedly, this case hinges upon circumstantial evidence. It

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is trite to reiterate that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. What is required is not the quantitative but the qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question, the previous and subsequent conduct are also relevant facts. Therefore, the absence of ordinary course of conduct of the accused and human probabilities of the case would also be relevant. The Court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held as proved and the conviction and sentence must follow.”

12. In the instant case, the prosecution had relied upon the following circumstances to connect the accused with the crime of murder of the victim:-

- (i) The absence of any explanation on the part of the accused with regard to the circumstance as to how the victim who was only a one and half year old infant, was removed from their custody?
- (ii) Disclosure statements of accused leading to demarcation of place of occurrence and incriminating article i.e. broom.
- (iii) Motive on the part of the accused to kill the victim.
- (iv) Failure to discharge the onus of proof under Section 106

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of Evidence Act.

(v) Statements of accused under Section 313 of Cr.P.C.

13. As per the prosecution version, the victim had died a homicidal death. PW-10 Dr. Sahil Sharma was one of the doctors who had conducted autopsy on the dead body of the victim and as per his deposition and also as per the postmortem examination report Ex.PW10/B, the cause of death of the victim was injuries and its complications. On examination of the dead body, bluish red coloured contusions over left side of scalp extending from left frontal to left occipital region, on right side of chest, on left lumbar region, on anterior aspect of left lower limb just above left knee and on anterior aspect of left upper limb just above left elbow joint were found. The injuries found on the person of the victim were ante mortem and sufficient to cause death in the ordinary course of nature. The statement of PW-10 remained unrebutted and unchallenged and hence proved that the death of the victim had occurred due to the injuries sustained by her and it was homicidal in nature.

14. The question that now arises for consideration is as to whether the learned trial Court was right in holding that the accused were the persons who had murdered the victim and concealed her dead body to cause disappearance of offence of her murder. On going through the evidence produced on record by the prosecution as well as the reasoning as given by learned trial Court, we are of the considered opinion that the learned trial Court had rightly held that the accused were the persons who had killed the victim. The victim was one and half year old infant of the accused persons who was obviously living under their care and custody. The testimony of

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PW-2, who was residing in neighbourhood of the accused to the effect that the victim was not a normal child as she was unable to walk and even speak and she used to keep on sitting, has remained uncontroverted. Her statement that the accused Ritu was step mother of the victim and both her husband and herself used to extend beatings to the victim also remained unshattered. The testimony of this witness is very important to show that act and conduct of the accused from 29.09.2019 to 01.10.2019. She deposed in no uncertain terms that as on 29.09.2019, she had noticed that both the accused were very scared and the accused Ritu was even seen weeping. She deposed about making inquiries as to the cause of her wailing and stated that the accused Ritu had disclosed that the victim had been taken from them by her grandfather. This witness further deposed that on 30.09.2019 on her asking, the accused Ritu had informed her that the victim child was admitted in hospital in Delhi by her grandfather as she was unwell and they would be going to see her. This witness further deposed that in the wee hours of the morning of 01.10.2019, she had even seen the accused leaving their room while carrying a black coloured bag and their infant son was also with them. This witness was subjected in incisive questions of cross-examination but the credit of her testimony remained unimpeachable. Her testimony as such establishes beyond doubt that the accused used to mistreat their daughter; that their act and conduct on 29.09.2019 and 30.09.2019 was not normal and that on 01.10.2019 they had left their room with a black coloured bag which as per PW-4 Rahul was the same bag that was found lying in the street adjacent to his house and from where the dead body of the victim was recovered. PW-2 had even identified this bag Ex.MO/1 when produced in

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the Court.

15. It is also important to mention that in her statement recorded before the police as well as in her sworn deposition, PW-2 had stated that the nighty with which the dead body of the victim was wrapped was previously given by her to the accused Ritu and she also identified the said nighty when produced in the Court as Ex.MO/3 and there was no challenge even to this part of her statement. There was no explanation whatsoever on the part of the accused as to why the nighty which used to be worn by accused Ritu was found wrapped around the dead body of the victim. The stand as taken by the accused in their defence was that the victim had been taken by the father of the accused Dalip as she used to remain unwell. However, neither the father of the accused Dalip had been examined as a defence witness nor it was explained as to on which particular date and month, the victim had been taken by the father of the accused Dalip with him. Since the victim was residing with them, therefore, both the accused were under an obligation to explain as to how and under what circumstances she had been found missing from their house and was then found murdered but no reasonable explanation could come forward from their side and such lack of explanation coupled with the fact that no report regarding missing of the victim was given to police, was certainly an incriminating circumstance linking them with the murder of the victim.

16. Apart from the above, the sworn deposition of PW-13 Sher Singh who was landlord of the property wherein the accused persons as well as PW-2 were residing, is also very important. His deposition proved that not only he was aware about the fact that the victim was not a healthy and

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normal infant but also that she was being ill-treated by the accused Ritu. He deposed that he had even scolded Ritu for misbehaving with the victim. As per this witness, the dead body of the victim was found at a distance of only about 100 meters from his house. He also deposed that the accused were found missing from their room as on 01.10.2019. The entire act and conduct of the accused persons as deposed to by PW-2 and PW-13 goes a long way to show their involvement in the murder of the victim as there is clinching evidence in the form of their statements showing that the victim must have been killed by the accused persons as on 29.09.2019 and after keeping her dead body concealed in their room till 30.09.2019, the accused persons in furtherance of their common intention wrapped the same and threw it in the street to cause disappearance of evidence of their offence and then left their tenanted premises.

17. Further, the motive on the part of the accused persons to eliminate the victim also stands established as it is evident that the accused Ritu who was step mother of the victim was not liking her and even accused Dalip along with her, used to misbehave with the victim and extend beatings to her and it can be reasonably inferred that with common intention to get rid of the unfortunate innocent infant, they extended beatings to her thereby killing her. The disclosure statement of the accused Ritu leading to recovery of a broom which was used for extending beatings to the infant victim was also a relevant circumstance. The learned trial Court after taking into consideration all the material circumstances including the inability on the part of the accused to offer any reasonable explanation as to how the victim had gone missing from their custody and how her dead body was

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recovered in a nighty which was used by the accused Ritu and further failure on their part to lead any evidence in defence to prove that the custody of the victim had been handed over to her grandfather prior to 29.09.2019, undoubtedly and unerringly pointed towards the involvement of the accused persons and of none else in the murder of the victim and about the fact that they were the persons who tried to cause disappearance of evidence of offence of murder. These circumstances cumulatively taken together constituted a complete chain so as to overrule the possibility of accused persons being innocent of the crime committed to them. As such, we have no hesitation to hold that the guilt of the accused for commission of offences punishable under Sections 302 and 201 read with Section 34 of IPC stood fully established by production of reliable and trustworthy evidence brought on record by the prosecution which led to the irresistible and inescapable conclusion that the prosecution had successfully brought home the guilt of the accused. The findings as given by learned trial Court are well reasoned and do not warrant any interference. Hence, finding no merit, we dismiss the appeal.

18. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

06.10.2023
manju

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No