

CRA-D-29-DB-2004 (O&M)

- : 1 :-

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

**CRA-D-29-DB-2004 (O&M).
Date of Decision: 18.12.2023.**

Krishan Dev @ Munna

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Aman Pal, Advocate for appellant.

Mr. Anant Kataria, Deputy Advocate General, Haryana.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant/convict Krishan Dev @ Munna, impugning the legality of judgment of conviction dated 02.12.2003 and order on quantum of sentence dated 05.12.2003 rendered by learned Additional Sessions Judge, Jagadhri, vide which appellant was held guilty and convicted for the commission of offence punishable under Section 302 IPC read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life, in case FIR No.139 dated 07.06.2002 under Sections 120-B and 302 IPC read with Section 34 IPC, Police Station Farakpur, District Yamuna Nagar.

2. As per prosecution version, on 07.06.2002 Umesh Kumar made a complaint (Ex.PC) to police raising allegations that his father Ram Anchal (since deceased) was employed as a Supervisor in Telephone Exchange,

R.L.U. Subzi Mandi, Yamuna Nagar. His mother Lalita and Ram Suari are real sisters. Ram Suari's husband Hari Nath Yadav was also employed as a Supervisor in the Telephone Exchange. Ram Anchal and Hari Nath Yadav were not enjoying cordial relations. Hari Nath Yadav expired in March, 2002. After the death of Hari Nath Yadav, complainant's father Ram Anchal used to visit the house of Ram Suari and helped her in getting the amount on account of service benefits of Hari Nath Yadav withdrawn from the Telephone Exchange. Ram Anchal wanted Ram Suari to have a job in place of her husband, whereas one of the sons namely Vasudev and Krishan Dev wanted to be employed in place of their father. On 07.06.2002 at about 8:30 PM, complainant was present at Bye-pass Chowk in his Three-wheeler and he was told by Pinki driver that his sister had come, who was looking for him. At this, complainant went back home at about 8:45 PM and saw a number of persons gathered outside his house. He came to know that his father was murdered by Vasudev son of Hari Nath Yadav in House No.41, Indra Garden. Complainant rushed to House No.41, where he met his mother Lalita and others. Complainant and his mother found dead body of his father lying in a pool of blood in a room situated behind the *verandah* of House No.41. Vasudev had killed Ram Anchal due to previous enmity between his father Hari Nath Yadav and Ram Anchal and to get himself or his brother Krishan Dev employed instead of his mother Ram Suari. On these allegations, FIR was registered.

After registration of FIR, Veena Rani daughter of deceased-Ram Anchal, made statement to the police that on 07.06.2002 at about 7:00 PM, appellant-Krishan Dev @ Munna visited her house to call her father

(Ram Anchal) but latter was not available at home, then appellant again visited her house after fifteen (15) minutes and by that time Ram Anchal had arrived. Appellant took Ram Anchal to his house on the pretext that matter regarding employment of co-accused Ram Suari, whose husband Hari Nath Yadav, had died in March, 2002, while in service in Telephone Department, was to be discussed. At about 7:45 PM, Lalita, Veena Rani and Tripta, wife, daughter and daughter-in-law respectively of Ram Anchal received information at their house that appellant and co-accused Vasudev @ Chunmun in connivance with their mother co-accused Ram Suari had given beatings to Ram Anchal. When above said Lalita and others rushed to the house of appellant, on the way, they noticed appellant fleeing away. When they reached at the house of appellant, they saw co-accused namely Vasudev @ Chunmun and Ram Suari coming out of the house and they left the house without talking to anyone. Above said Lalita and others entered the house and found Ram Anchal lying dead on a cot in a pool of blood and there were injury marks on his body inflicted with sharp-edged weapon. Veena Rani (PW-3) reached taxi stand to inform her brother Umesh Kumar (complainant/PW-2), who was a auto driver, about the occurrence but as he was not available there, she returned home while disclosing about the occurrence to another driver Pinki and asked him to pass on the information to her brother Umesh Kumar (complainant/PW-2) on his arrival. At about 8:45 PM, Umesh Kumar reached home and came to know that his father Ram Anchal has been killed by Vasudev @ Chunmun. Thereafter, Umesh Kumar (complainant/PW-2) reached the house of appellant/accused, where he found his father Ram Anchal lying dead. Umesh Kumar had gone to

police station to inform the police and thereafter police arrived at the spot and carried out investigation. Inquest proceedings (Ex.PH) were conducted and dead body of Ram Anchal was sent to Civil Hospital, Yamuna Nagar, for postmortem examination. Detailed report of crime (Ex.PJ) was prepared. Autopsy on the dead body of Ram Anchal was conducted by Dr. Dinesh Goel (PW-1) and Dr. Deepan Jain and as many as twenty two (22) injuries were detected on the body of deceased. Both lungs were found having wounds corresponding to injuries. Heart was punctured with corresponding chest injury. Liver and spleen too were ruptured and clotted with blood. Injuries were ante mortem in nature. The cause of death was opined to be shock and haemorrhage due to multiple injuries which were sufficient to cause death in natural course of life. After postmortem examination, parcel containing clothes of Ram Anchal (since deceased) was taken into possession, vide memo (Ex.PE). Sub Inspector Sunder Singh (Investigating Officer/PW-7) again visited the spot and bloodstained portion of the *Nivar* of the cot on which dead body was lying, was taken into possession after converting the same into a sealed parcel, vide memo (Ex.PD).

On 08.06.2002, co-accused Vasudev @ Chunmun was arrested. During interrogation on 09.06.2002, he suffered disclosure statement (Ex.PK) and in pursuant to his disclosure statement, he got recovered a dagger (*Chhuri*) on 10.06.2002. Rough sketch of dagger (Ex.PL/2) was prepared and then said dagger was converted into a sealed parcel and the same was taken into possession, vide memo (Ex.PL). Rough site plan (Ex.PL/1) of the place of recovery of dagger was prepared. Prior to said recovery, appellant/accused-Krishan Dev and co-accused Ram Suari were

produced before Investigating Officer by one Surya Kant and they were arrested. On interrogation, appellant/accused suffered disclosure statement (Ex.PM) and in pursuant to his disclosure statement, he got recovered bloodstained T-shirt (Ex.P-3) and Pant (Ex.P-4), which were converted into a sealed parcel and the same were taken into possession, vide memo (Ex.PN). Rough site-plan (Ex.PN/1) of the place of recovery was prepared.

Parcels containing clothes of deceased, *Nivar*, dagger and clothes of appellant-Krishan Dev @ Munna were sent to Forensic Science Laboratory, Madhuban, for examination. Vide FSL report (Ex.PR), human blood of group 'A' was detected on all those articles except dagger. Said dagger was found having bloodstains but its origin could not be determined because the material had disintegrated.

After completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against all the three accused in the Court.

3. Finding a *prima facie* case, accused were charge-sheeted for the commission of offence punishable under Section 302 IPC read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

4. To substantiate its case, prosecution has examined PW-1 Dr. Dinesh Goel (Medical Officer), PW-2 Umesh Kumar (complainant), PW-3 Veena Rani (daughter of deceased), PW-4 Constable Ram Kumar (Draftsman), PW-5 Assistant Sub Inspector Prem Singh, PW-6 Assistant Sub Inspector Yash Pal (partly examined but later on given up being unnecessary), PW-7 Sub Inspector/Station House Officer Sunder Singh (Investigating Officer), PW-8 Head Constable Ram Pal and PW-9 Constable

Sahab Singh. After tendering FSL Report (Ex.PR) in evidence and giving up remaining witnesses being unnecessary, prosecution evidence was closed by learned Public Prosecutor for the State.

5. After closure of prosecution evidence, statements of accused as envisaged under Section 313 Cr.P.C. were recorded, wherein all the incriminating material/evidence were put to them, but they have denied all the allegations levelled against them. Co-accused Ram Suari had categorically stated that on 07.06.2002 at about 8:00 PM, when she was all alone, her brother-in-law Ram Anchal (since deceased) came to her house and forcibly tried to commit rape on her and in the meantime her son Vasudev @ Chunmun entered the house and on seeing Ram Anchal trying to commit rape on her, he (Vasudev @ Chunmun) attacked Ram Anchal. At that time, her son Krishan Dev (appellant/accused) was not present in the house. She further stated that in case her son Vasudev @ Chunmun had not come to her rescue, Ram Anchal (since deceased) would have molested and raped her. She further stated that both Ram Anchal and Vasudev @ Chunmun grappled with each other and Vasudev @ Chunmun inflicted injuries to Ram Anchal in her as well as his self defence. Accused-Vasudev @ Chunmun got recorded his age as sixteen (16) years and took the same defence as that of his mother co-accused Ram Suari. Appellant/accused got recorded his age as seventeen (17) years and stated that he is innocent and has been falsely implicated in the instant case. He further stated that he was not present at the spot when alleged occurrence took place.

6. No evidence has been led in defence by the accused persons.

7. It is pertinent to mention here that after recording statements of

accused as envisaged under Section 313 Cr.P.C., appellant-Krishan Dev @ Munna and co-accused-Vasudev @ Chunmun moved formal applications to declare them juveniles in terms of provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. On their applications, inquiry was held and co-accused Vasudev @ Chunmun was found to be less than eighteen (18) years of age at the time of commission of alleged offence and he was declared juvenile and it was held that his trial before that Court had vitiated and should have been conducted before Juvenile Justice Board in accordance with the procedure prescribed therein. Prosecution was held at liberty to file separate *Challan* against co-accused Vasudev @ Chunmun before Juvenile Justice Board. However, claim of appellant-Krishan Dev @ Munna regarding juvenility was rejected.

8. On appreciation of evidence, learned Trial Court convicted and sentenced Krishan Dev @ Munna (appellant herein) for commission of offence punishable under Section 302 IPC read with Section 34 IPC, vide judgment of conviction dated 02.12.2003 and order on quantum of sentence dated 05.12.2003, as detailed above, whereas co-accused Ram Suari was acquitted of charge levelled against her.

9. It is relevant to point out here that co-accused Vasudev @ Chunmun was tried as juvenile by Juvenile Justice Board Yamuna Nagar for the commission of offence punishable under Section 302 IPC read with Section 34 IPC and ultimately vide judgment dated 10.09.2010, he was acquitted of charge levelled against him.

10. We have heard learned counsel for the appellant as well as learned State counsel and critically examined the evidence available on the

record.

11. Learned counsel for the appellant *inter alia* contended that instant case is based on circumstantial evidence and there is no direct evidence against the appellant. The circumstantial evidence has several missing links and does not point towards the guilt of the appellant. Motives as enunciated by PW-2 Umesh Kumar (complainant) and PW-3 Veena Rani are contradictory and do not inspire confidence. Last seen evidence as propounded by PW-3 Veena Rani does not match with the time line given by her. Alleged recovery of weapon of offence has been shown to be got effected at the instance of co-accused Vasudev @ Chunmun and as such appellant had no nexus with the said material circumstance. Even otherwise, alleged recovery of bloodstained clothes from an open space accessible to everyone renders the said recovery inconsequential. Alleged occurrence did not take place in the manner as well as in the time line as alleged, which makes the prosecution version highly doubtful. PW-2 Umesh Kumar and PW-3 Veena Rani have made lot of improvements and contradictions in their respective statements and they being interested witnesses and especially the fact that no independent witness was joined, it would be unsafe to rely upon their testimonies. Material witnesses namely Lalita, widow of deceased, Tripta, daughter-in-law of deceased and Mansa Ram, recovery witness were given up as unnecessary witnesses by the prosecution for the reasons best known to it resulting therein that there is no corroboration of the testimonies of PW-3 Veena Rani and PW-7 Sunder Singh (Investigating Officer) on material particulars. Part testimony of PW-6 ASI Yash Pal is of no use to prosecution as that witness was given up

after part examination. Learned Trial Court has passed the impugned judgment without appreciating the evidence led on the record. The appellant has been falsely implicated and wrongly convicted on the basis of evidence which is materially discrepant/deficient and does not satisfy the legal requirements. Since prosecution version is discrepant on material particulars and the fact that it is full of infirmities, thus, prosecution has utterly failed to prove its case beyond shadow of reasonable doubt and consequently judgment of conviction and order on quantum of sentence are liable to be set aside and resultantly appellant is entitled to be acquitted of charges levelled against him.

12. On the other hand, learned State counsel has vehemently argued that prosecution has proved its case against the appellant by leading cogent and convincing evidence. While rebutting the cause of appellant, he further contended that from the testimonies of PW-2 Umesh Kumar (complainant), PW-3 Veena Rani and PW-7 Sub Inspector Sunder Singh (Investigating Officer), it is established that Ram Anchal was murdered by the appellant by causing multiple injuries which proved fatal. With regard to the testimonies of PW-2 Umesh Kumar (complainant) and PW-3 Veena Rani, though learned Trial Court agreed that said witnesses had made improvements in their statements and that it is possible that these witnesses have not seen any of the accused coming out of the house or fleeing away from the spot, but learned Trial Court rightly observed that the dead body of Ram Anchal was recovered from the house of appellant/accused and Ram Anchal (since deceased) was taken there by the appellant and further he got recovered his bloodstained clothes. The blood group on the clothes matched

with the blood group of Ram Anchal (since deceased) and these facts were held to be conclusive factors proving involvement of appellant in the crime. The defence version was rightly discarded by learned Trial Court observing that weapon used in the commission of crime is not such a weapon which is generally found in the houses, rather it was an arranged weapon obviously for committing the crime. As per testimony of PW-1 Dr. Dinesh Goel, as many as twenty two (22) injuries were detected on the body of deceased. Those injuries were ante mortem in nature and cause of death was opined to be shock and haemorrhage due to multiple injuries which were sufficient to cause death in natural course of life. Above injuries on the body of Ram Anchal (since deceased) show that he was brutally murdered. Thus, learned State counsel contended that appellant has rightly been convicted and sentenced by learned Trial Court for the commission of offence punishable under Section 302 IPC read with Section 34 IPC.

13. While having due regard to the contentions of learned counsel for the appellant and learned State counsel, it is observed that in the present case, prosecution has mainly relied upon circumstantial evidence.

14. Hon'ble Supreme Court in Chenga Reddy v. State of A.P. 1996(10) SCC 193, has observed as under:-

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be

consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

15. In Padala Veera Reddy v. State of A.P. 1990(2) RCR (Criminal) 26, it was laid down by Hon'ble Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

In State of U.P. v. Ashok Kumar Srivastava 1992(3) R.C.R. (Criminal) 63 (SC), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

16. Sir Alfred Wills in his admirable book '**Wills' Circumstantial Evidence' (Chapter VI)** lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

17. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by Hon'ble Supreme Court as far back in 1952.

18. In **Hanumant Govind Nargundkar v. State of M.P.**, AIR 1952 SC 343, Hon'ble Supreme Court observed as under:-

"It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every

hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

19. A reference may be made to a later decision of Hon'ble Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of Hon'ble Supreme Court, before conviction could be based on circumstantial evidence must be fully established. They are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;*
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) the circumstances should be of a conclusive nature and tendency;*
- (4) they should exclude every possible hypothesis except the one to be proved; and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

20. Keeping in view above said settled proposition of law, there is no doubt that conviction can be based solely on circumstantial evidence, but it should be tested by the touchstone of law relating to circumstantial evidence. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance fully established and all the facts, so established, should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

21. Having considered the submissions made by learned counsel for the parties and after careful perusal of record of the case, we are of the considered opinion that prosecution has failed to prove the charges levelled against appellant/accused and reasons thereof are enumerated as under:-

- (i) The case is based on circumstantial evidence and it is incumbent upon the prosecution to complete the chain of circumstances. Alleged occurrence did not take place in the manner and time as alleged. As per prosecution version, alleged murder of Ram Anchal took place on 07.06.2002 at about 7:30 PM and the FIR was registered on the same day at 11:20 PM. However, a bare perusal of testimony of PW-1 Dr. Dinesh Goel

(Medical Officer), who conducted post-mortem examination on the body of deceased Ram Anchal reveals that the probable time that elapsed between injury and death was within few hours and that between death and post-mortem examination was within twenty four (24) hours. At this juncture, a careful scrutiny of Post-Mortem Report (Ex.PA) is quite relevant, in terms of which, post-mortem examination on the dead body of Ram Anchal was conducted on 08.06.2002 at 11:00 AM. In case, we calculate the time gap between death of Ram Anchal and post-mortem examination of his dead body, it comes around 15-16 hours, whereas PW-1 Dr. Dinesh Goel has categorically stated that time gap between death and post-mortem examination of body of deceased was within twenty four (24) hours. In this scenario, time gap of 15-16 hours between death of Ram Anchal and post-mortem examination of his dead body leads to clear inference that the manner and time in which the alleged occurrence took place was something else and to show the alleged occurrence having been taken place at about 7:30 PM on 07.06.2002, it appears that some kind of improvement was made in the prosecution version so as to make it somewhat credible.

(ii) As regards the motive in a case of murder, on the basis of direct evidence, is of little importance, but if the case is based on circumstantial evidence, then motive assumes greater importance. Normally, there is motive behind every criminal act and that is why Investigating Agency as well as the Court while

examining the complicity of an accused tries to ascertain as to what was the motive on the part of the accused to commit the crime, in question. The Investigating Agency as well as the Court should ascertain as far as possible, as to what was the immediate impelling motive on the part of the accused, which led them to commit the crime. In the present case, PW-2 Umesh Kumar (complainant) has categorically testified that after the death of Hari Nath Yadav (father of appellant/accused- Krishan Dev @ Munna), his father Ram Anchal (since deceased) was helping co-accused Ram Suari, widow of Hari Nath Yadav, to get the dues from the Telephone Department and further he was making efforts to get employment for co-accused Ram Suari on compassionate ground, whereas co-accused Vasudev @ Chunmun and appellant-Krishan Dev @ Munna, sons of Hari Nath Yadav, did not want that their mother Ram Suari should get employment on compassionate ground and rather they wanted job for themselves and this was the motive enunciated at the instance of complainant. However, PW-3 Veena Rani, daughter of Ram Anchal (since deceased) while rendering a different proposition stated that accused persons were nursing a grudge against her father (Ram Anchal) because Hari Nath Yadav was a man of bad habits and he (Hari Nath Yadav) was under the impression that he was scolded by his superiors on the asking of her father who was working in the same department. In this view of the matter, the motives which have been pressed

into service at the instance of prosecution are on absolutely different footings and make the prosecution version doubtful.

(iii) Another circumstance which goes in favour of appellant/ accused is that on 10.06.2002, co-accused Vasudev @ Chunmun in pursuant to his disclosure statement (Ex.PK) got recovered weapon of offence i.e. dagger (*Chhuri*). It is pertinent to mention here that Mansa Ram, alleged recovery witness of said weapon of offence, has not been examined by the prosecution for the reasons best known to it. Apart from that PW-6 ASI Yash Pal, recovery witness, was also given up after his part examination and as such part testimony of said witness is of no use to the prosecution. In this scenario, alleged recovery of weapon of offence and that too from the possession of co-accused Vasudev @ Chunmun has no footing to stand as testimony of PW-7 Sub Inspector Sunder Singh (Investigating Officer) does not find any corroboration from any other source. Due to non-examination of PWs Mansa Ram and ASI Yash Pal, alleged recovery of bloodstained clothes from appellant/ accused appears to be doubtful. At this juncture, it is relevant to point out here that though initially co-accused Vasudev @ Chunmun was tried alongwith co-accused but at the fag-end of the trial, he moved an application to declare him juvenile and for his separate trial before Juvenile Justice Board, and that is why the trial of Vasudev @ Chunmun was separated and his matter was dealt

with by Juvenile Justice Board, Yamuna Nagar at Jagadhri. Vide judgment of acquittal dated 10.09.2010, Vasudev @ Chunmun was acquitted of charges levelled against him in the instant FIR and it appears that matter pertaining to acquittal of Vasudev @ Chunmun has attained finality. Even otherwise, a bare perusal of FSL Report (Ex.PR) clearly reveals that dagger (knife) which was sent to FSL for laboratory examination to detect the presence of blood and its species of origin and group, but on analysis, no human blood was detected on it as the material had disintegrated. Once it has come on the record that no weapon of offence was got recovered at the instance of appellant/accused, his alleged nexus with the commission of crime in question falls to the ground.

(iv) Even otherwise, testimonies of PW-2 Umesh Kumar (complainant) and PW-3 Veena Rani are at variance on material particulars. PW-2 Umesh Kumar stated that when he accompanied by his mother and sister (Veena Rani) went to the house of Hari Nath Yadav and as soon as they reached there, they saw co-accused Vasudev @ Chunmun and Ram Suari coming out of the house, whereas appellant/accused-Krishan Dev @ Munna was not present at home. On the other hand, PW-3 Veena Rani while rendering a different version stated that as soon as her father had left the house, after about 5/10 minutes, she alongwith her mother had gone to the house of accused and on reaching there, they saw Krishan Dev @ Munna coming out

of the house with a bundle of clothes in his hand and when they entered the house, they saw co-accused Vasudev @ Chunmun holding a dagger and his mother co-accused Ram Suari was also present there and on seeing them, both of them (Vasudev @ Chunmun and Ram Suari) fled away without disclosing anything. In this manner, testimonies of star witnesses are at variance. PW-2 Umesh Kumar (complainant) has altogether ruled out the presence of appellant/accused Krishan Dev @ Munna at the site of occurrence and on the other hand, PW-3 Veena Rani has attributed somewhat incriminating roles to co-accused Vasudev @ Chunmun and Ram Suari, who have already been acquitted of charges levelled against them by Juvenile Justice Board and Trial Court, respectively.

(v) Circumstance that victim-deceased was last seen in the company of appellant/accused as propounded by PW-3 Veena Rani appears to be an afterthought version. Above said circumstance has been pressed into service by prosecution on the ground that on 07.06.2002 at about 7:00/7:30 PM, when PW-3 Veena Rani alongwith her mother Lalita and sister-in-law Tripta Rani were present in their house, appellant/accused Krishan Dev @ Munna had come to their house and called her father and took him away on the pretext of some important work with him. Once it has come on the record that testimony of PW-3 Veena Rani is discrepant on material particulars, it was incumbent upon the prosecution to examine PWs Lalita

and Tripta Rani to give impetus to the above said circumstance that victim-deceased was last seen in the company of appellant/accused. However, prosecution chose not to examine PWs Lalita and Tripta Rani for the reasons best known to it and, thus, fractured testimony of PW-3 Veena Rani does not come to the rescue of cause of prosecution.

22. In view of the facts and circumstances of the case and the evidence available on record, it can be easily concluded that prosecution has failed to complete the chain of circumstances. Thus, none of the pieces of evidence relied on as incriminating by the learned Trial Court, can be treated as incriminating pieces of circumstantial evidence against the appellant/accused. Realities of truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible and unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence which is totally missing in this case. Thus, prosecution has failed to prove the charges levelled against appellant/accused beyond the shadow of reasonable doubt.

23. As a sequel to above said findings, appeal is allowed and accordingly judgment of conviction dated 02.12.2003 and order on sentence dated 05.12.2003 passed by learned Trial Court are set aside. Resultantly,

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appellant/accused is acquitted of charges levelled against him. His bail bond and surety bond stand discharged.

24. Pending application, if any, also stands disposed of.

(Anupinder Singh Grewal)
Judge

(Lalit Batra)
Judge

18.12.2023
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No