

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

\*\*\*

354 + 203

CRA-D-1034-DB-2010 (O&M)

Date of Decision: 19.01.2023

KRISHAN KUMAR JHA

-Appellant

Versus

STATE OF HARYANA

-Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Ms. Monika Thakur, Advocate  
Legal Aid Counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

\*\*\*

**KULDEEP TIWARI, J.**

1. The present appeal has been directed at the instance of appellant/accused, against the verdict of conviction dated 04.06.2010, and, order of sentence dated 07.06.2010, rendered by the learned Additional Sessions Judge, Ambala, in case FIR No.27 dated 01.02.2009, registered under Sections 201/302 of IPC, at Police Station Baldev Nagar, District Ambala, whereby he has been convicted for the offence punishable under Sections 201 and 302 of IPC, and, has been awarded sentence as under:-

| Offence under<br>Section | Period (R.I.)    | Fine        | In Default       |
|--------------------------|------------------|-------------|------------------|
| 201 of IPC               | R.I. for 5 years | Rs.10,000/- | R.I. for 1 year  |
| 302 of IPC               | R.I. for life    | Rs.25,000/- | R.I. for 2 years |

**PROSECUTION STORY**

2. The prosecution agency was set into motion upon receipt of a telephonic message in the police station on 01.02.2009, at about 03:40 p.m., to the effect that a bundle of cloth is lying under the culvert of dirty drain, behind Motor Market, whereupon, SHO Suraj Bhan along with his co-officials reached at the spot. The bundle of cloth was taken out from the culvert and upon checking the same, a decomposed female dead body was found wrapped in it. One Surjit Singh Bhangu (PW6), who passed the above information, was found present at the spot and he got recorded his statement, Ex.P7, the contents of which reads as under:-

“I am resident of aforementioned address and I do agriculture work. I am Dy. Chairman of Human Rights, District Ambala. Today, at about 3:30 p.m., I was going towards my Kothi from Motor Market. When I reached near the culvert of Ganda Nala, then 5/6 children were standing on the culvert and were looking underneath the culvert. I asked the children about what they were looking at, who told that one bundle of cloth is lying in the water of drainage underneath the culvert. I thought that it may be possible that someone after stealing clothes, placed the said bundle underneath the culvert and the bundle may have fallen down in the water. I gave information in this regard to Police Station and Police Post Baldev Nagar. On receipt of information, you came at the spot and after taking out the bundle from water, underneath the culvert, you opened it and found a dead body of an unknown woman, aged about 26/28 years, who was wearing petticoat of red colour, underwear of red

colour, one white blouse with small bunches of flowers, artificial earrings, artificial nose pin, red colour rubber bangles, and, because of remained lying in the water, her body was leaving skin being rotten and casting blackishness on the face, because of swelling. It appears that some unknown person(s), after killing this unknown women somewhere else, wrapped her body in a bundle of cloth and threw this bundle in the dirty water, underneath the culvert of Ganda Nala, to conceal the crime.”

On the basis of above statement, Ex.P7, the present FIR was registered against unknown person.

**POLICE INVESTIGATION**

3. The Scene of Crime Team was called at the spot. Photographs of the dead body were clicked from different angles. The Scene of Crime Team collected sample of water, in a bottle, from the culvert of dirty drain, where dead body was recovered. The bottle containing sample of water and the bed sheet, in which dead body was wrapped, were converted into parcels, which became sealed with seal bearing impression 'SB' and these parcels were taken into possession vide recovery memo, Ex.P8. Thereafter, the inquest proceeding, Ex.P14, qua dead body, under Section 174 Cr.P.C., was conducted. The rough site plan, Ex.P15, with marginal notes was prepared by SHO Suraj Bhan (Initial Investigation Officer), who was examined as PW8 by the prosecution.

4. On 02.02.2009, the dead body was sent to Forensic Department of PGIMS, Rohtak, as the post mortem could not be

conducted at Civil Hospital, Ambala, due to decomposed condition of the dead body. The post mortem was conducted on 03.02.2009, whereupon, the cause of death was opined as 'Asphyxia' due to smothering and throttling. On 03.02.2009, the investigation was handed over to ASI Naresh Kumar (PW17). On the same day, at about 05:00 p.m., while searching clue regarding murder of unidentified lady, one Sushil Kumar (PW7), Sarpanch of Village Sultanpur, District Ambala, met ASI Naresh Kumar (Investigation Officer) and produced Krishan Kumar Jha (present appellant) before him, along with a hand-written note (Ex.P9) alleged to be written by the appellant/accused confessing his guilt. The Investigation Officer asked Sushil Kumar (PW7) to make a writing under his own hand to corroborate the extra judicial confession of appellant/accused and consequently, he also executed a writing under his own hand, Ex.P10. Both these writings/notes, Ex.P9 and Ex.P10, were taken into possession vide recovery memo, Ex.P11. Thereafter, upon interrogation, the appellant/accused made a disclosure statement to the effect that he can get demarcated the place where he committed murder of his wife as well as the place where he threw her dead body. The disclosure statement of appellant/accused was reduced into writing, Ex.P17, and in pursuance thereof, he led the police party and demarcated both the aforesaid places. Separate site plans were also prepared. However, nothing incriminating material was recovered from the appellant/accused.

5. Thereafter, pursuant to confession, Ex.P9, made by

appellant/accused, the parents of deceased Neelu Devi were informed and on 07.02.2009, Rama Kant Thakur (PW2) and Sanjiv Kumar (PW15), father and brother respectively of deceased, came to Police Post Baldev Nagar. The Investigation Officer showed them the photographs of dead body, which they identified to be of Neelu Devi. Rama Kant Thakur (PW2) also produced joint photograph (Ex.MO6) of deceased Neelu Devi and appellant/accused, besides, photocopies of documents, vis-a-vis, court orders drawn in maintenance case of Neelu Devi, and, affidavit executed by appellant/accused, which were taken into possession vide recovery memo, Ex.P3. The statements of witnesses were recorded under Section 161 Cr.P.C. After completion of investigation, the Station House Officer filed the Final Report under Section 173 Cr.P.C. before the concerned Illaqa Magistrate. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate, committed the case to the court of Sessions vide committal order dated 14.05.2009.

**PROCEEDINGS OF TRIAL COURT**

6. Finding a prima facie case, the appellant/accused was charge-sheeted for commission of offence punishable under Sections 201 and 302 of IPC, to which he pleaded not guilty and claimed trial.

7. The prosecution, in order to prove its case, examined as many as 17 witnesses. The statement of the appellant/accused, under Section 313 Cr.P.C., was recorded, wherein, he pleaded innocence while denying all the allegations levelled against him. He stated that he has not committed murder of his wife Neelu Devi and she is still alive. He further

stated that he has not met his wife Neelu Devi for past many years, and, his wife and her parents had never been to Ambala at any point of time. He further stated that he has been falsely implicated in the present case by police, in connivance with family members of his wife Neelu Devi, who have wrongly identified someone else's dead body to be of his wife Neelu Devi and that the police has fabricated false documents and memos etc. to rope him in the present case.

8. The learned trial Court, after completion of trial, recorded the impugned verdict of conviction and order of sentence, whereby, the appellant/accused has been convicted for offence punishable under Sections 201 and 302 of IPC.

**SUBMISSIONS BY COUNSELS FOR THE PARTIES**

9. The learned counsel for the appellant/accused vehemently argued that the learned trial Court has not appreciated the evidence in its right perspective and there is no material available on record to connect the appellant with the alleged crime. She further argued that the present case is of circumstantial evidence, however, there is no proven circumstance rather to establish the guilt of the appellant/accused. The prosecution has even failed to establish the identity of the recovered dead body, therefore, it is a case of *corpus delecti*. Moreover, the identification of dead body, as said to have been made from photographs, is also false. In fact, the most material witness, i.e. daughter of the appellant/accused, was neither joined investigation nor was examined by the prosecution during the course of trial. She also argued that the prosecution has

miserably failed to either assign or prove any motive for committing such a crime. The extra judicial confession, alleged to have been made by appellant/accused, is totally a forged, and, a fabricated document. Lastly, a prayer was made for acquittal of the appellant/accused on the ground that there are material contradictions in the statements of material witnesses, and, that the findings of learned trial Court being perverse and infirm, are not sustainable in the eyes of law.

10. Per contra, the learned counsel for the State placed heavy reliance upon the report of DNA test (Deoxy Ribo Nucleic Acid examination), in respect of Rama Kant Thakur and Premshila Devi and the bone sample of deceased Neelu Devi, which was proved on record by Dr. Pandu Guguloth (CW1). He also drew attention of this Court towards the extra judicial confessional statement of the appellant/accused to prove the case of prosecution against him. Further, he also placed reliance on the statement of Sushil Kumar (PW7), to whom the appellant/accused, for the first time, made a confession of his crime. In order to prove the motive behind the commission of the present crime, reliance was placed on the statements of Rama Kant Thakur (PW2) and Sanjiv Kumar (PW15), father and brother respectively of deceased Neelu Devi. Concluding his arguments, he submitted that the learned trial Court has rightly based the conviction of the appellant/accused, as recorded in the impugned judgment, on the strength of his extra judicial confession besides other evidence available on record and therefore, the same does not warrant any interference by this Court.

**REASONS**

11. The case in hand is based on circumstantial evidence, therefore, it is the duty of this Court to examine whether all the circumstances necessary to establish the guilt of the appellant/accused are proved by the prosecution, beyond reasonable doubt. Every link in the chain of circumstances needs to be alleged and proved by the prosecution. Therefore, let us examine the documentary as well as oral evidence led by the prosecution threadbare, to test the legality of the impugned verdict of conviction, as recorded by the learned trial Court.

**IDENTIFICATION OF DEAD BODY**

12. The present FIR was registered on the statement, Ex.P7, made by Surjit Singh Bhangu (PW6), who upon noticing a bundle wrapped in a cloth, lying in culvert of dirty drain, passed information to the police and subsequent thereto, police reached at the spot and took out the aforesaid bundle from the culvert and upon checking the wrapped bundle, it was found to have contained the decomposed dead body of a female. Thereafter, police conducted investigation in the surroundings to find out whether any woman was missing from the locality, and, thereupon it surfaced that the wife of appellant/accused was missing. On 03.02.2009, Sushil Kumar (PW7) produced the appellant/accused before the police along with his confession, carried in Ex.P9, wherein, he confessed that he has committed murder of his wife Neelu Devi and threw her dead body in the culvert, after wrapping it in a bed sheet. On the basis of such a confession, the parents of deceased Neelu Devi were

informed by the police. On 07.02.2009, Rama Kant Thakur (PW2) and Sanjiv Kumar (PW15), father and brother respectively of deceased Neela Devi, came to Police Post Baldev Nagar and upon seeing the photographs of dead body, as shown by the Investigation Officer, identified deceased Neelu Devi. They also produced joint photograph of deceased Neelu Devi and appellant/accused, before the Investigation Officer. Furthermore, the DNA test in respect of Rama Kant Thakur and Premshila Devi and the bone sample of deceased Neelu Devi, resulted in the ultimate conclusion, that the dead body was biologically related to Rama Kant Thakur and Premshila Devi. In order to prove the report of DNA test, the prosecution examined Dr. Pandu Guguloth, Assistant Director, DNA, Forensic Science Laboratory, Madhuban (Karnal) as CW1, the relevant part of whose report, Ex.P31, is reproduced as under:-

“Conclusion:- The autosomal STR analysis conclusively proves that the source of Item No.3 (Bone) is biologically related to Ramakant Thakur (Source of item No.1) and Premshila Devi (Source of item No.2).”

Dr. Pandu Guguloth (CW1) was put to a pointed and lengthy cross-examination by the defence, however, nothing material could be elicited to impeach the credibility of his report. Therefore, in the light of above, we can safely conclude that the dead body recovered from the culvert, near Motor Market, Baldev Nagar, Ambala, was biologically related to Rama Kant Thakur and Premshila Devi, parents of Neelu Devi (since deceased), and, thus, the prosecution has succeeded in establishing

the identity of the dead body, beyond any reasonable doubt.

**MEDICAL EVIDENCE**

13. The autopsy, on the unidentified female dead body, was conducted on 03.02.2009 by a team of doctors. In order to prove its case, the prosecution examined Dr. Sushil Gambhir, Resident, Department of Forensic Medicine, Pt. B.D. Sharma, PGIMS, Rohtak, as PW1, who was a member of the aforesaid medical team. He proved on record the carbon copy of the post mortem report as Ex.P22. In his examination-in-chief, he stated that he kept one femur and teeth in a sealed parcel, bearing three seals, for DNA profiling. He also kept humerus and sternum in a sealed parcel, bearing three seals, for diatum test. After examining the FSL reports, Ex.P23 and Ex.P24, he stated that the diatum test was negative and therefore, according to him, death in the present case was not a result of drowning. Even, as per the FSL report, Ex.P24, no poison was found in the viscera, as preserved at the time of post mortem examination.

14. Perusal of the post mortem report, Ex.P22, goes on to show that the cause of death was 'Asphyxia', as a result of smothering and throttling, and, the probable time between death and post mortem was opined as 3-5 days. As per the post mortem report, the following injuries were found on the dead body:-

“I. A contusion of size 3.5cm x 1.5cm present on the left side of the face near the angle of mouth. On dissection, there is ecchymosis of tissues underneath.

II. A contusion of size 2cm x 1.5cm is present around the nose more of in the midline. On dissection, there is ecchymosis of tissues underneath.

III. A contusion of size 2cm x 1.5cm present around the mouth on the lower lip. On dissection, there is ecchymosis of tissues underneath.

IV. A contusion of size 1.5cm x 1cm present on the right angle of mouth. On dissection, there is ecchymosis of tissues underneath.

V. A contusion of size 3cm x 4cm present on the left side of the neck, 4.5cm below the left angle of mandible. On dissection, there is ecchymosis of tissues underneath.

VI. A contusion of size 2cm x 1.5cm present on the right side of the neck, 3.5cm below the right angle of mandible. On dissection, there is ecchymosis of tissues underneath. On further dissection, the underlying tissues, trachea was congested, with the evidence of fracture of thyroid cartilage. There is evidence of ecchymosis of tissues underneath.

Opinion: It is the dead body of a young adult female. The cause of death is asphyxia as a result of smothering and throttling, however, viscera has been preserved for chemical analysis and bones for diatum test and DNA profiling.

The probable time that elapsed between death and post-mortem is 3-5 days.”

#### **EXTRA JUDICIAL CONFESSION**

15. As per the prosecution version, on 03.02.2009, Sushil Kumar (PW7), produced the appellant/accused before the Investigation Officer along with a hand written note, Ex.P9, and informed that the appellant/accused has murdered his wife and he himself made confession to this effect before him, and, now, in order to avoid any kind of torture

by police, the appellant/accused has requested him to produce him before the police. He also informed the Investigation Officer that the appellant/accused has told him that, after an altercation with his wife, he murdered his wife on 23.01.2009 by throttling her neck and thereafter, he wrapped her dead body in a bundle of cloth and threw the same in the culvert of dirty drain on that night itself. Thereafter, on asking of the Investigation Officer, Sushil Kumar (PW7) also executed a writing under his own hand, Ex.P10, to verify the above factum of confession, as made by the appellant/accused. Both the above writings/notes were taken into possession vide recovery memo, Ex.P11. The relevant extract of extra judicial confession, Ex.P9, alleged to made by the appellant/accused, is reproduced as under:-

“My name is Krishan Kumar Jha s/o Late Bhupati Jha, resident of H.No.34-A, Jaggi Colony, Phase-II, Ambala City. I had murdered my wife Nitu Devi D/o Rama Kant Thakur, resident of District Samastipur (Bihar), in the night of 23.01.2009, at about 12.00 midnight, after smothering her throat and mouth, and, being feared of apprehension, placed the dead body in a bed sheet and converted it in bundle. I carried the same on my shoulder, in the same night, at about 2.00 a.m., and threw it into the Ganda Nala, underneath the culvert, behind Motor Market. Her dead body is now recovered by the police. I am being feared of apprehension. Police is patrolling in my street. I confess my crime and I may be produced before the police. Sir, I confess with regret.”

16. To prove its case and the genuineness of the extra judicial

confession, the prosecution examined Sushil Kumar as PW7, who stated that the appellant/accused had confessed his guilt before him, as he is Sarpanch of that Village. However, during cross-examination, he admitted that the appellant/accused is residing in Jaggi Colony, which falls within municipal area, and, has its own elected Municipal Councilor, and, that his village is half kilometer away from Jaggi Colony. He denied the suggestion offered by defence that he is a stock witness of police and that the appellant/accused neither approached him nor suffered any extra judicial confession. It has nowhere surfaced in his statement that he was having any prior acquaintance or cordial relations with him.

17. We have examined the statement of Sushil Kumar (PW7) as well as the extra judicial confession (Ex.P9). However, we are unable to place any reliance upon the extra judicial confession, for not one, but, many reasons. First of all, Sushil Kumar (PW7), to whom the appellant/accused confessed his guilt, admittedly was not having any prior acquaintance with him nor there were any cordial relations between them, which goes on to show that he was a total stranger to the appellant/accused and belonged to a different village. Therefore, in such circumstances, there arises no occasion for the appellant/accused to go to the house of a stranger, like Sushil Kumar (PW7), in a different village and confess his guilt. Secondly, as per the prosecution version, the hand written confession of appellant/accused (Ex.P9) was taken into possession by the police on the very same day i.e. 03.02.2009, however, police made no endeavour to get the admitted handwriting of the

appellant/accused compared with the alleged handwritten confession (Ex.P9). There is a specific admission in the cross-examination of the Investigation Officer (PW17) that he did not obtain any specimen handwriting, or, any admitted standard writing of the appellant/accused, nor got the same compared with the writing, carried in Ex.P9, from any handwriting expert. Since, the makings of the handwritten confession, Ex.P9, has been challenged through suggestions being meted to the Investigation Officer (PW17) in his cross-examination, therefore, even if, assumingly, there is no direct denial by the appellant/accused qua his authoring Ex.P9, yet, in the face of the credit of the witness concerned, before whom Ex.P9 became made, it incumbent upon the prosecution to prove that the accused had authored Ex.P9. However, want of proof, in respect of the confession, Ex.P9, becoming authored by the appellant/accused, constrained this Court to conclude that the reliance upon the confession, Ex.P9, is inapt, and/or, that on the basis of the confession, Ex.P9, no firm inference can be raised that hence the prosecution has been able to, beyond reasonable doubt, prove the charges drawn against the appellant/accused. Not only this, a reading of the extra judicial confession (Ex.P9), depicts that the appellant/accused murdered his wife on 23.01.2009, at about 12:00 midnight, by smothering her throat and mouth, whereas, the post mortem report (Ex.P22), conducted on 03.02.2009, results in the conclusion that the probable time between death and post-mortem was 3-5 days. Therefore, the medical evidence adduced by the prosecution, does not support the extra judicial confession

(Ex.P9), as alleged to have been made by the appellant/accused. In view of the above discussed facts and circumstances, we are unable to place reliance upon the alleged extra judicial confession (Ex.P9) and the prosecution has failed to prove the genuineness of this document.

**CIRCUMSTANTIAL EVIDENCE**

18. As stated above, upon being produced by Sushil Kumar (PW7), the appellant/accused was arrested on 03.02.2009. Subsequently, his police remand was obtained and during interrogation, on 04.02.2009, he suffered disclosure statement, Ex.P17, wherein he disclosed that on 23.01.2009, in night hours, he had murdered his wife Neelu Devi, in his own room, by pressing her throat and mouth with his hands. On the same night, at about 02:00 a.m., he wrapped her dead body in a bundle of cloth and carried it on his shoulders to the culvert of dirty drain, behind motor market, and threw it there, with intention to destroy the proof. He also stated that he had made an extra judicial confession before Sushil Kumar Sarpanch (PW7) and also gave him a writing to this effect. He further disclosed that he can get demarcated the places where he committed murder of his wife, and, where he threw her dead body. In pursuance of his disclosure statement (Ex.P17), he led the police party and demarcated the places where he committed murder of his wife, and, where he threw her dead body, whereupon, respective demarcation memos Ex.P18 and Ex.P19 were prepared. It is imperative to note that no incriminating material, whatsoever, was recovered from the aforesaid places.

19. The prosecution also examined ASI Naresh Kumar

(Investigation Officer) as PW17, who, during the course of his cross-examination, categorically admitted that the place, from where the dead body was recovered and pointed out by the appellant/accused as per the demarcation memo (Ex.P19), was very much in the knowledge of police, prior to the demarcation by the appellant/accused. He also admitted that the house of appellant/accused was also in the knowledge of police. The relevant extract of his cross-examination reads as under:-

“The house of the accused and the place from where the dead body was recovered, was already in the knowledge of the police. The distance between the house of the accused and place of recovery of dead body is about one km.”

Once, both the aforesaid places, which were allegedly disclosed by the appellant/accused in his disclosure statement, were already in the knowledge of the police, therefore, such disclosure statement loses its significance and is directly hit by provision of Section 25 of the Indian Evidence Act and accordingly, is not admissible. Even, in pursuance of the alleged disclosure statement, no incriminating material, connecting the appellant/accused with the commission of present crime or to establish that the deceased was murdered at that place, was recovered. Therefore, at the best, such disclosure statement can be termed to be a confession, however, a confession, as made to a police officer, while in custody, is absolutely inadmissible in evidence, without any limitation or qualification, especially when the fact disclosed in pursuance thereof, was evidently in the knowledge of the police officer concerned. Therefore, we find that the present is a case of no evidence

against the appellant/accused, except a case of strong suspicion, and, a suspicion, howsoever strong it may be, cannot substitute the requirement of legal evidence, which shall be proved beyond any reasonable doubt.

**MOTIVE**

20. In order to attach motive upon the appellant/accused for commission of the present crime, the prosecution examined Rama Kant Thakur as PW2 and Sanjiv Kumar as PW15, father and brother respectively of deceased Neela Devi. As per the prosecution version, both these witnesses came to Police Post Baldev Nagar on 07.02.2009 and identified deceased Neelu Devi, through photographs shown to them by police. They also produced joint photograph (Ex.MO6) of deceased Neelu Devi and appellant/accused, besides, photocopies of documents, vis-a-vis, court orders drawn in maintenance case of Neelu Devi, and, affidavit executed by appellant/accused before Court, which were taken into possession vide recovery memo, Ex.P3.

21. By referring to these documents, Rama Kant Thakur (PW2) alleged that her daughter Neelu Devi was married to appellant/accused in the year 1984 and she cohabited with him till 1994, however, in 1994, his daughter Neelu Devi was ousted from her matrimonial house. She was having one daughter, namely, Laxmi Kumari. Upon filing a petition, the appellant/accused started paying maintenance to her. In the year 1996, Neelu Devi filed an appeal for enhancement of maintenance and during pendency of such appeal, the matter stood compromised between them and it was agreed that the appellant/accused will pay half of his pension

to Neelu Devi. Thereafter, the appellant/accused started visiting his daughter deceased Neelu Devi at their house. However, it came to his knowledge that the appellant/accused was having affair with some other girl. Initially, his daughter Neelu Devi was not ready to accompany the appellant/accused at Ambala, however, upon the assurance given by appellant/accused that there is no girl with him, she accompanied him to House No.34, Jaggi Colony, Ambala. Later, he came to know that the appellant/accused was indulging in nefarious activities and was demanding money. Thereupon, he visited Ambala in October, 2008 and persuaded the appellant/accused not to harass his daughter and as a result, he started keeping his daughter properly. Upon seeing his daughter living happily, he left for his village, however, he also took along with him his grand-daughter Laxmi Kumari. In February, 2009, he received a message from Police Station, Ambala, regarding murder of his daughter. It specifically stands recorded at the end of his examination-in-chief that he is not aware of any reason for murder of his daughter.

The above version of Rama Kant Thakur (PW2) was further supported by Sanjiv Kumar (PW15), who also deposed on the same lines and repeated the version of Rama Kant Thakur (PW2), however, he stated that the appellant/accused had performed second marriage at Ambala and was living at Ambala with his second wife, and, he did not state anything with regard to demand of money. The motive assigned by this witness, as recorded at the end of his examination-in-chief, is the second marriage of the appellant/accused.

22. Admittedly, both the aforesaid witnesses are not the eye-witnesses and they came to Ambala from Bihar only on 07.02.2009 after receipt of information from police regarding murder of Neelu Devi. The prosecution examined both these witnesses to establish motive and the identity of the unidentified female dead body. We have examined the statements of both these witnesses and we find that different motives emanate from the statements of both of them. On one hand, though, Rama Kant Thakur (PW2) has not assigned any specific motive, however, he stated that the appellant/accused used to indulge in nefarious activities and used to demand money from Neelu Devi. On the other hand, Sanjiv Kumar (PW15) has categorically deposed that second marriage of the appellant/accused was the motive behind murder of Neelu Devi. We find that neither there is any evidence available on record to substantiate the plea of second marriage of the appellant/accused nor any efforts were made by police to identify and locate the alleged second wife to establish the motive, as attributed to the appellant/accused. Not only this, the statements of both these witnesses were contradictory to each other on vital aspects.

23. There is another important factor that the daughter of the appellant/accused, namely, Laxmi Kumari, who could be the best witness to substantiate the claims of harassment and demand of money etc., has neither joined investigation nor has been examined by the prosecution during the course of trial. Therefore, withholding such a material witness by the prosecution has caused a serious dent to the prosecution case.

Ultimately, we have no hesitation to conclude that the prosecution has miserably failed to prove the motive as alleged.

**CONCLUSION**

24. In view of the afore-discussed facts and circumstances, it emanates that the prosecution has failed to establish any case against the appellant/accused. We, therefore, find that the prosecution has not been able to prove the charges against the appellant/accused beyond the shadow of doubt.

25. For the reasons stated above, without any hesitation, we have reached the conclusion that the appellant/accused is not guilty of having committed offence punishable under Sections 201 and 302 of IPC. Therefore, the **verdict of conviction** dated 04.06.2010, and, **order of sentence** dated 07.06.2010, rendered by the learned Additional Sessions Judge, Ambala, is hereby **set aside**, being suffering from vice of perversity and infirmity. The appellant be forthwith set at liberty, if not required in any other case.

26. The appeal stands **allowed**.

(SURESHWAR THAKUR)  
JUDGE

(KULDEEP TIWARI)  
JUDGE

19.01.2023  
devinder

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